



# THE RACHAEL ROLLINS POLICY MEMO

MARCH 2019





*“I don’t believe accountability has to equal incarceration. There are many ways that we can hold people accountable without putting them in jail.”*

- District Attorney Rachael Rollins





# MESSAGE FROM THE DA

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March 25, 2019

Team:

During the campaign, I committed to crafting and implementing new policies that would dramatically change the way we approach criminal prosecution in Suffolk County. I want to take a moment to thank you for being patient during this process, for welcoming me, for embracing new staff, and for being willing to reimagine how a modern prosecutor's office can conduct business.

I want our office to be data-driven in everything we do, and this means taking a careful look at our data and fully understanding the characteristics of our caseload before putting any countywide policies into place. I also wanted to observe and analyze other jurisdictions that have adopted similar policies, to determine if they have enjoyed success.

I am pleased to inform you that with the help of some leading experts in the field, a preliminary analysis of our data has been completed and a review of other jurisdictions that have adopted similar policies shows that their experiences thus far have been positive. Similarly, we have identified a number of key areas where the policies I proposed are appropriate for implementation. You will find these policies, and a discussion of why they are appropriate, in the pages that follow.

A handwritten signature in white ink, appearing to read "Rachael", is positioned in the lower right area of the page.



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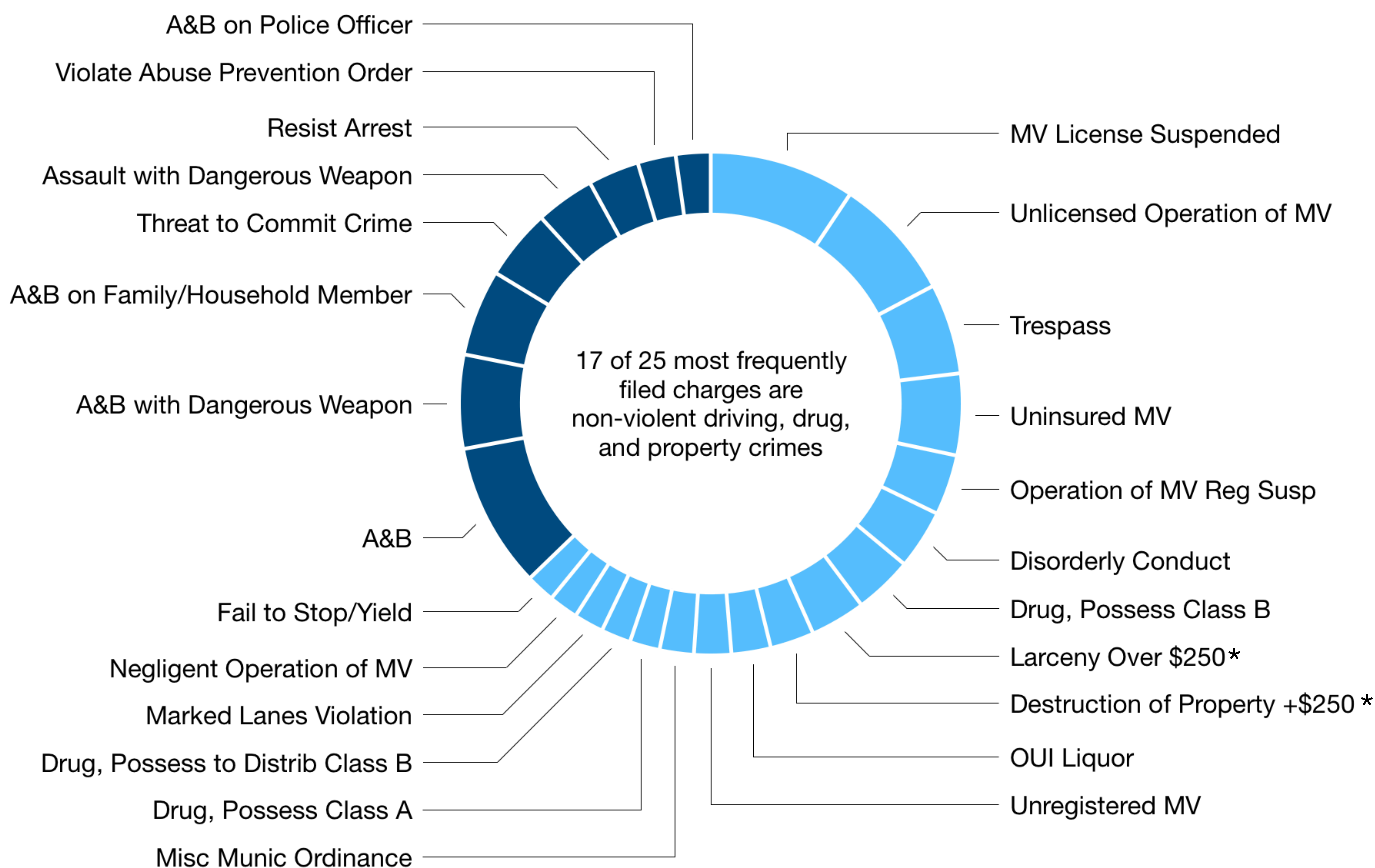
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# A New Lens

## Top 25 Charges Filed by the Suffolk County District Attorney's Office, 2013-Present



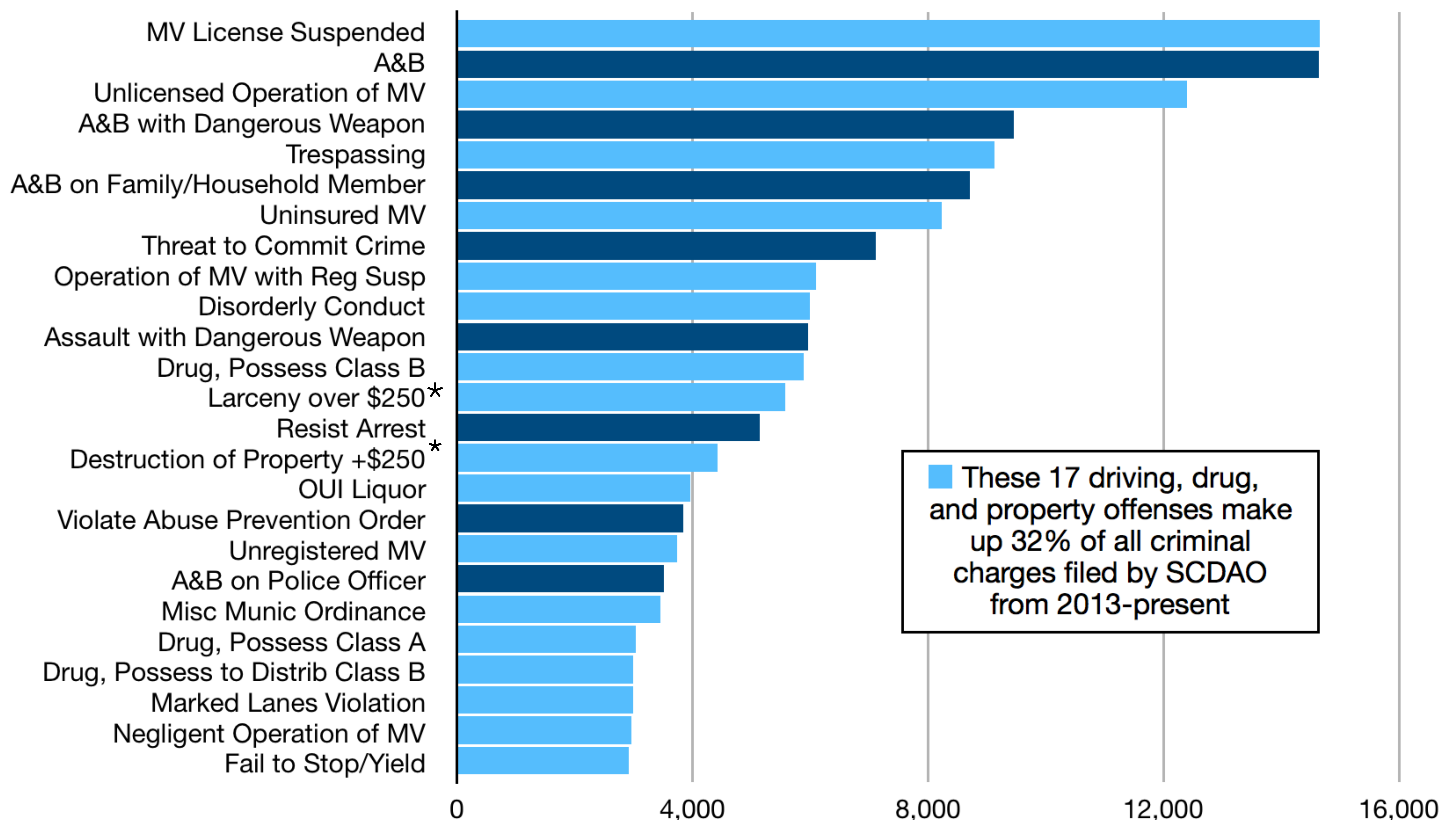
\* The threshold for Larceny and Malicious Destruction of Property is now \$1,200

Source: SCDAO Internal Data (as of Feb. 2019)<sup>1</sup>

A dramatic shift in thinking around criminal justice is occurring in the United States. Sweeping advances in data science and public health have revealed that decades of punitive incarceration are not effectively preventing recidivism and promoting public safety.<sup>2</sup> A large number of criminal convictions secured by prosecutors nationally are for drug, property, and public order offenses, which are often driven by economic, mental health, and social needs.<sup>3</sup>



## Volume of the Top 25 Charges Filed by the Suffolk County District Attorney's Office, 2013-Present



\* The threshold for Larceny and Malicious Destruction of Property is now \$1,200

Source: SCDAO Internal Data (as of Feb. 2019)

As the graphics above and on the previous page demonstrate, these trends hold true in Suffolk County. Seventeen of the 25 most frequently filed charges in criminal court are nonviolent motor vehicle, drug, and property offenses.

Data show that a carceral approach to low-level, non-violent offenses can do more harm than good.<sup>4</sup> A criminal record often presents barriers to education, future income, housing, and many other necessary assets and supports proven to help people thrive and succeed in society.<sup>5</sup>



As a result, jurisdictions across the country are taking a smarter approach to punishment and accountability. Law enforcement agencies and prosecutors' offices are collecting and analyzing new and varied sources of data, and they are safely beginning to move all but the most serious offenses away from carceral punishment and its downstream collateral harms.<sup>6</sup>

## States (BLUE) Implementing Non-Specialty Diversion Programs (as of 2017)

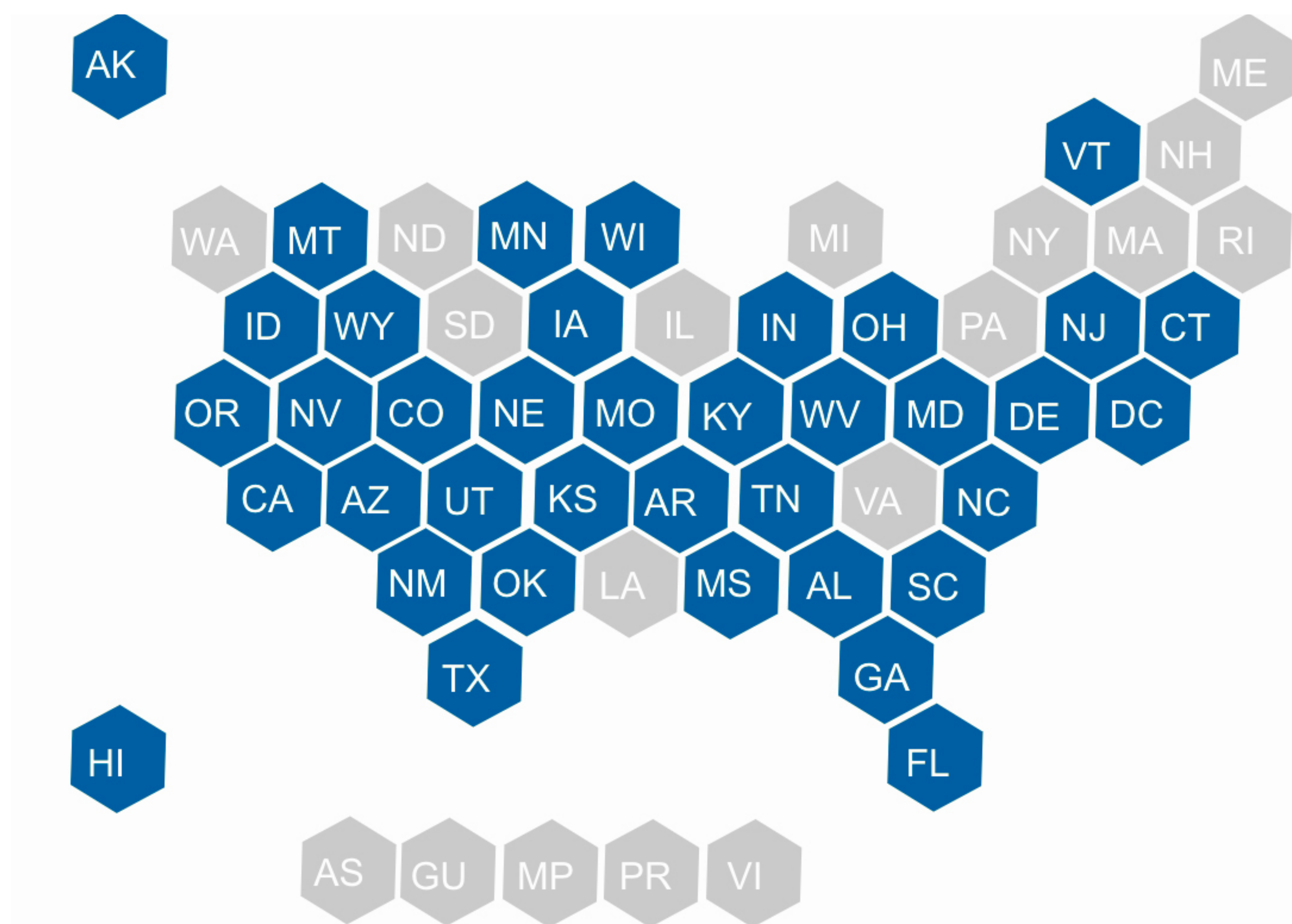


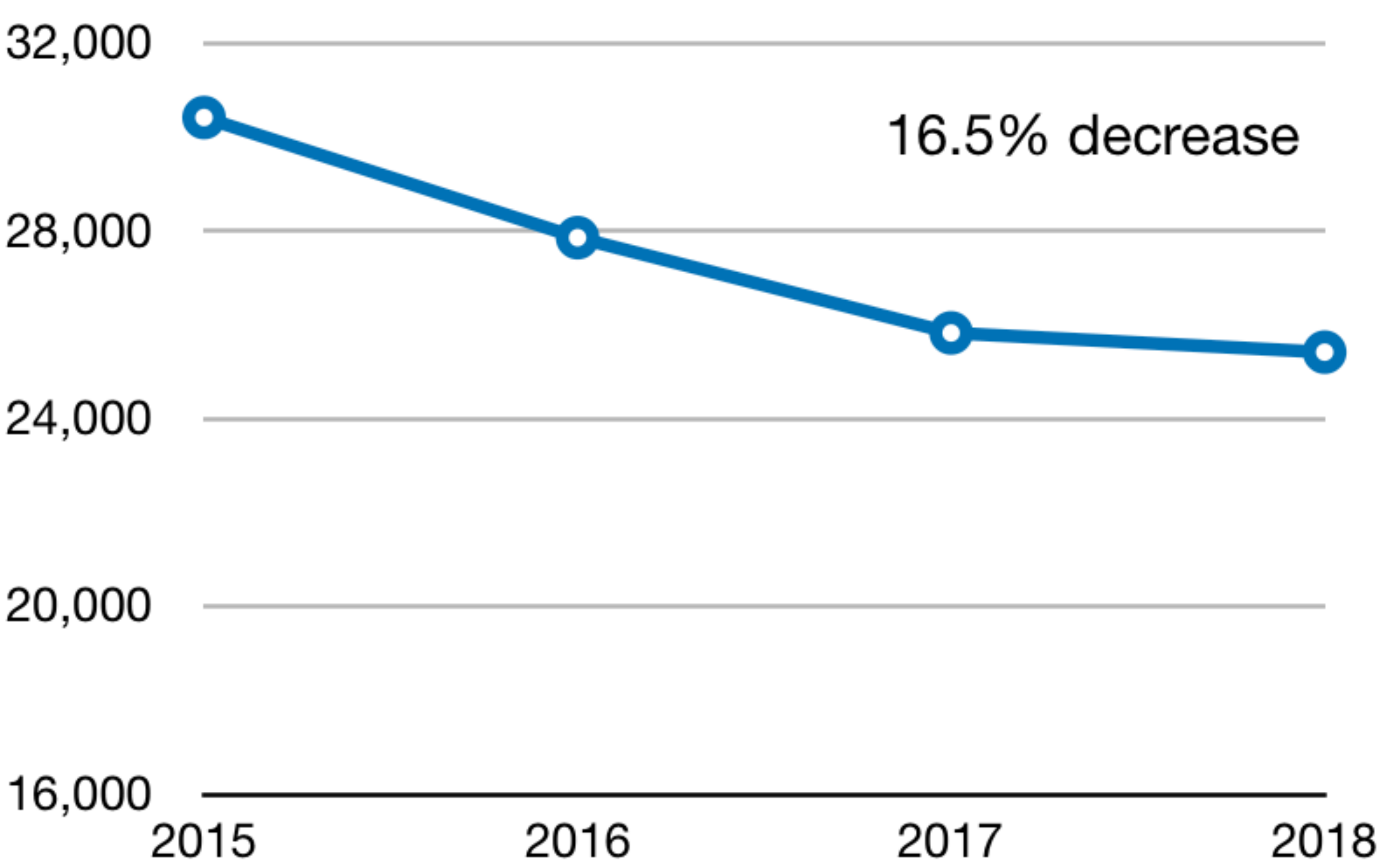
Image Credit: National Council of State Legislatures

In place of traditional criminal justice system outcomes such as arrest, detention, prosecution, probation, and incarceration, criminal justice practitioners and policymakers are working in collaboration with community partners to develop and implement innovative, evidence-driven diversionary alternatives that data show are more likely to promote safer and healthier communities.<sup>7</sup>

For a list of examples of other progressive, innovative, and forward-thinking jurisdictions, see [APPENDIX A](#).



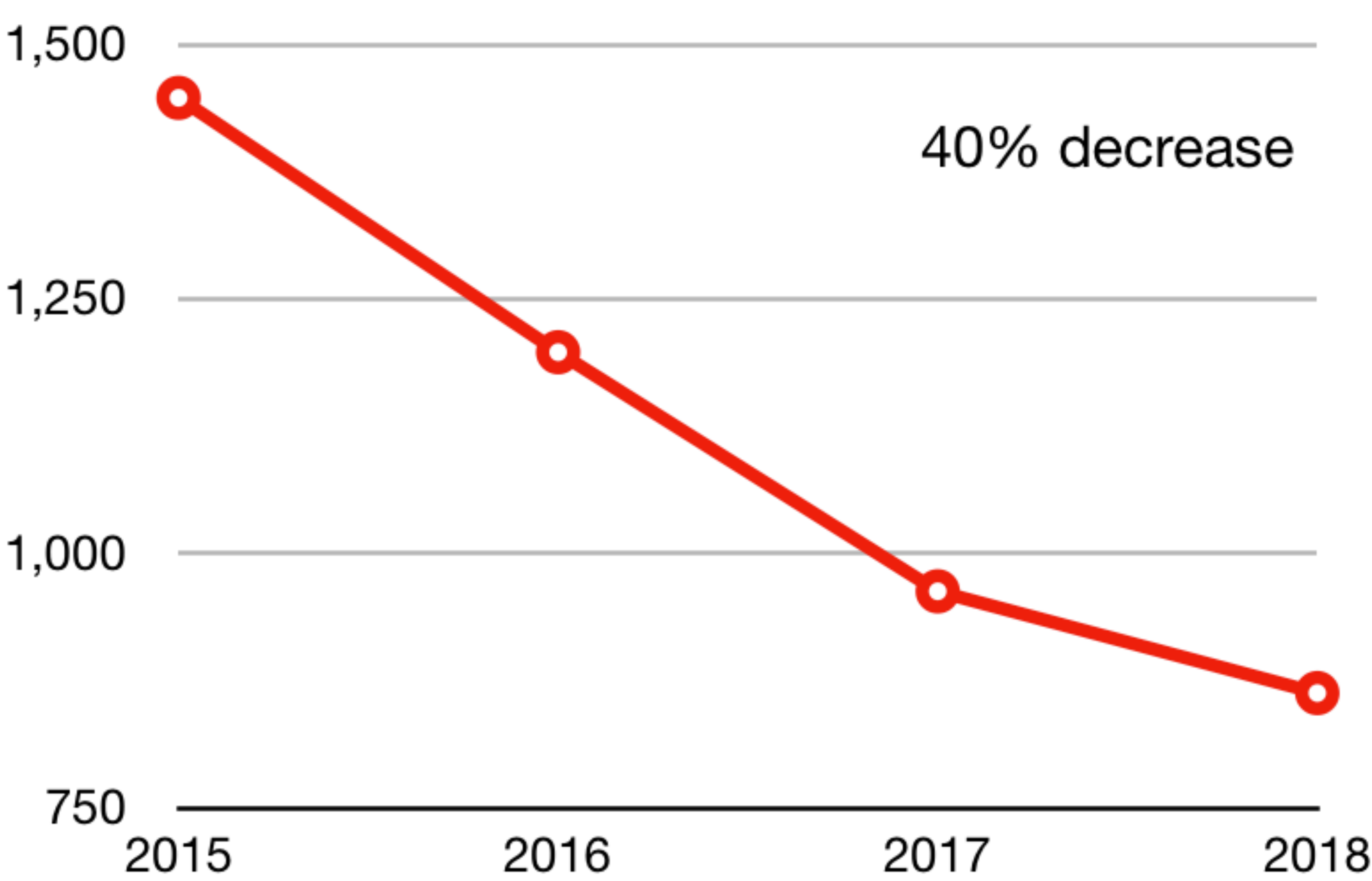
**Suffolk County Criminal Adult Complaints, 2015-2018**



Source: Official MA Trial Court Statistics

As shown in the table to the left, we in Suffolk County have already begun responding to this shift. A review of Massachusetts Trial Court data in recent years shows that under the leadership of my predecessor, DA Dan Conley, and with the support of other law enforcement agencies, the number of adult criminal complaints handled by this office decreased 16.5%.

**Suffolk County Criminal Juvenile Complaints, 2015-2018**

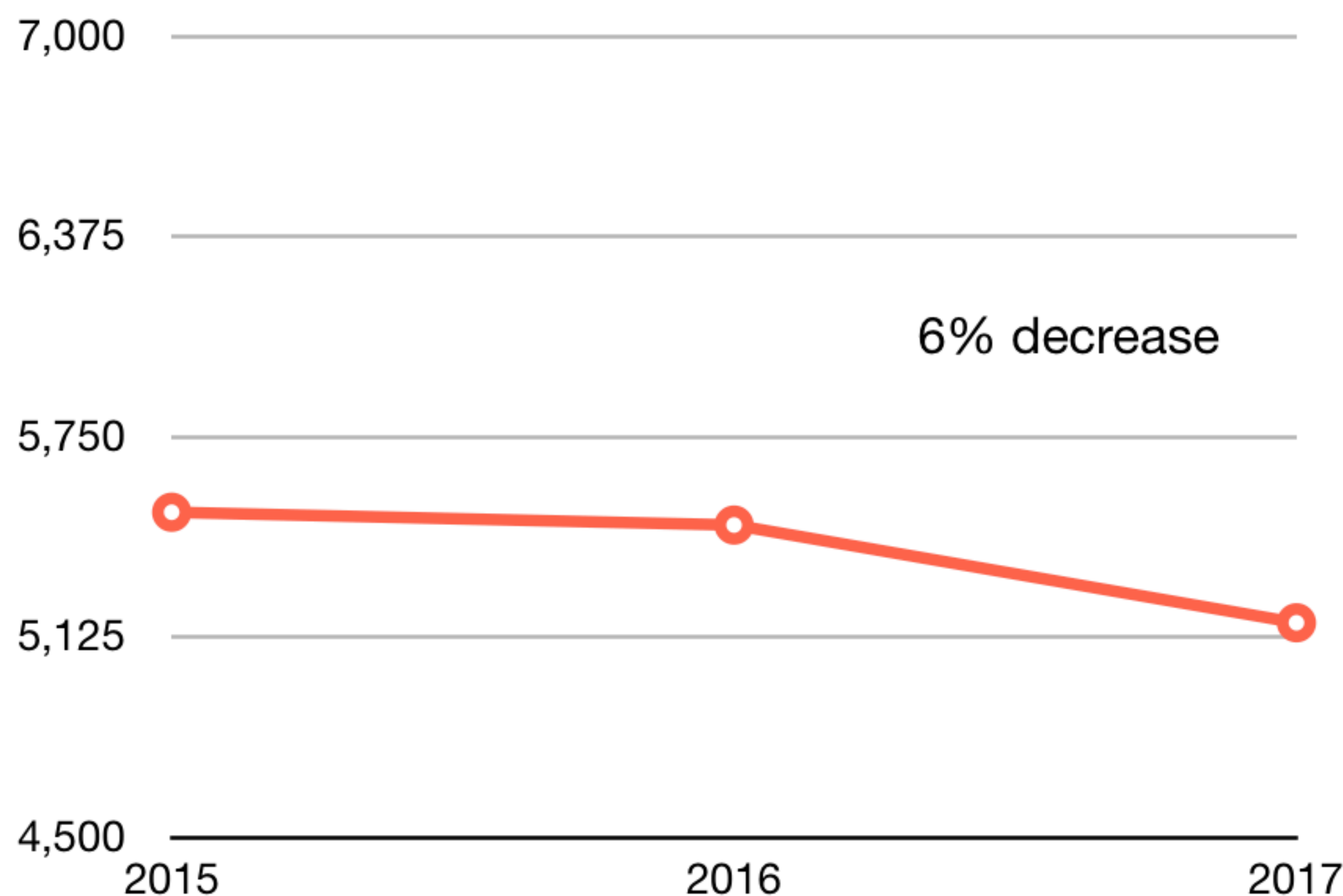


Source: Official MA Trial Court Statistics

The table to the right also shows that during that same period of time this office dramatically decreased the number of juvenile complaints prosecuted by 40%. Perhaps most significant is that the SCDAO Juvenile Alternative Resolution Program (JAR) also diverted upwards of 60% of the remaining juvenile complaints away from traditional prosecution tracks.

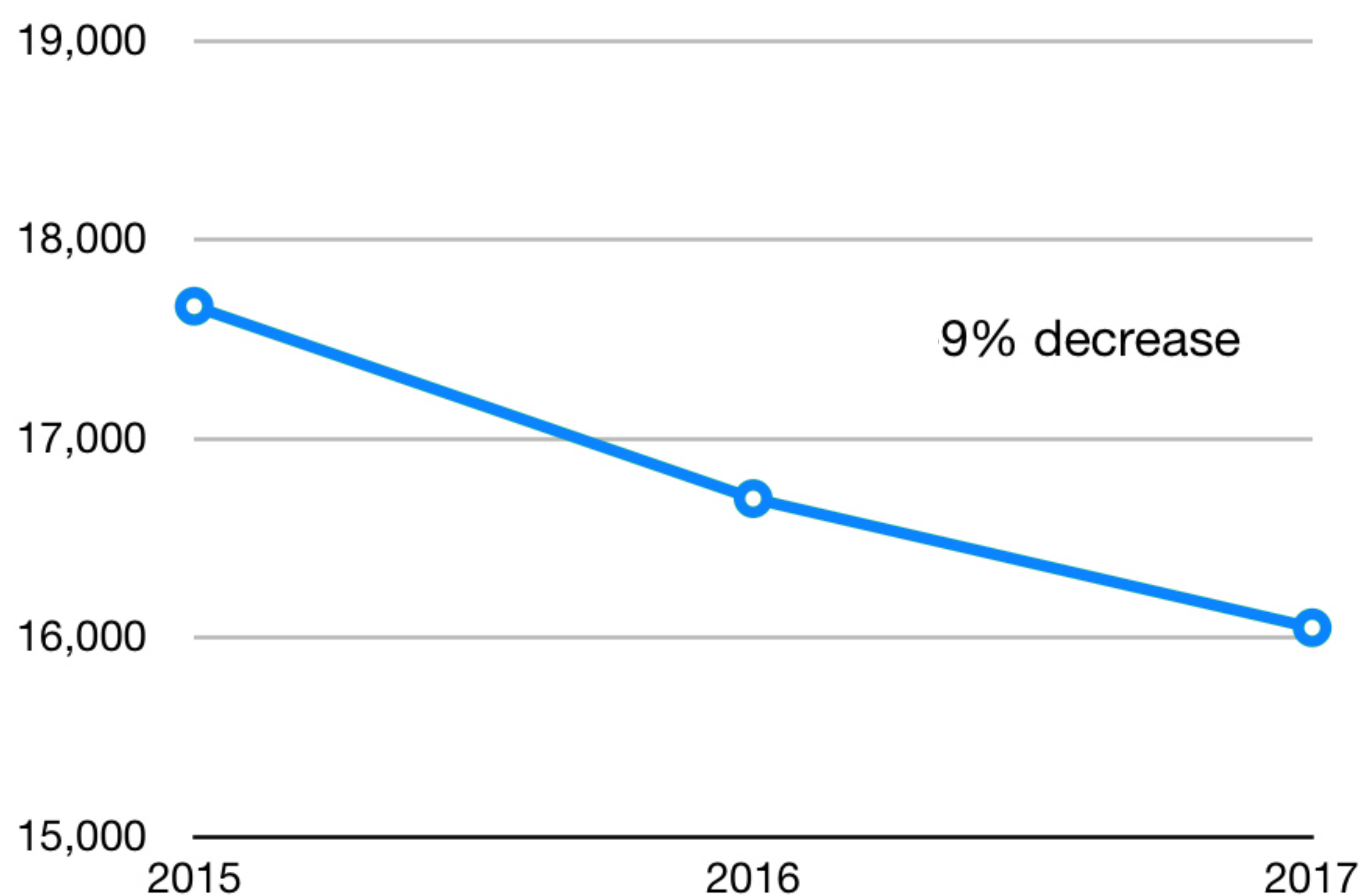


### Violent Crime in Boston, Chelsea, Revere & Winthrop, 2015-2017



Source: Annual  
FBI UCR Statistics

### Property Crime in Boston, Chelsea, Revere & Winthrop, 2015-2017



Source: Annual  
FBI UCR Statistics

At the same time, the above graphics of FBI crime statistics for Suffolk County show that both property crime and violent crime have decreased.<sup>8</sup> Meanwhile, according to data released by the Massachusetts Sheriffs' Association and MassINC, the number of people sentenced to jail and prison in Massachusetts, including Suffolk County, has declined significantly.<sup>9</sup>



This is excellent progress and shows that the Suffolk County District Attorney's Office can file fewer criminal charges, divert more people who need help into services and treatment, send fewer people to jail and prison, all while improving the health and public safety of Suffolk County residents.

I am pleased to announce, effective immediately, the following official guidelines and policies of the Suffolk County District Attorney's Office. These guidelines and policies, as with all of our office's policies and decisions going forward, will be grounded in science and data, modeled after the best known local and national practices, and will build upon and expand the important work and relationships begun under the leadership of my predecessors.



# A New Office Culture

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My first decision on my first day in office was to make the executive floor at One Bulfinch accessible to every SCDAO employee. So, I unlocked the doors. I want all SCDAO staff to be able to drop in, visit, have a snack, bring their children by to say hello, without an appointment. I want our relationships with one another as a staff to be open and trusting. Our office culture should acknowledge and be inclusive of the needs that we have as individuals, and members of families.



Rachael with members of her Transition Team



Rachael with the daughter of a SCDAO employee

I want the openness and trust we enjoy as a staff to extend outward into the community. From survivors who rely on us to fight for accountability in their names, to activists who observe us in courtrooms to hold us publicly accountable, this office prides itself on its accessibility, responsiveness, and transparency.



SCDAO is deeply committed to principles of equity, fairness, openness, and enthusiasm. We work tirelessly to strengthen the social fabric of our communities. We do this by keeping our communities healthy and safe and by building a criminal justice system that works for everyone. We are professionals and ministers of justice, but we are also individuals who need and deserve care, compassion, and support.

What follows is a non-exhaustive but essential list of principles that define our office:

- Each of us deserves to live in a community where we are secure, have the opportunity to succeed, and are treated fairly and with dignity and respect. The mission of the Suffolk County District Attorney's Office is to strengthen the social fabric of our communities by keeping our communities safe and secure and building a criminal justice system that works for all of us.
- SCDAO is made up of creative, hard-working problem solvers who support one another, hold each other accountable, and focus on safety and reducing harm to Suffolk County and all of its residents.
- Crime survivors and their families often experience severe trauma that can negatively impact their health and/or interfere with their ability to work and care for their families. SCDAO prioritizes helping survivors find the support they need, regardless of their participation in ongoing cases, and advocates for policies and programs that provide survivors with needed resources to end cycles of victimization.
- SCDAO holds itself to the highest ethical standards. Therefore, we will not tolerate inappropriate or unethical behavior from any person who works in our office. Any such behavior should be reported to your supervisor or management. If there is uncertainty, we will always err on the side of full disclosure and process.
- SCDAO believes that wealth should never determine freedom, the quality of one's representation, or the outcome received in the criminal justice system.



- SCDAO knows that defense counsel are a vital part of the criminal justice system, and that their hard work ensures accurate and fair outcomes. Therefore, SCDAO treats opposing counsel with respect and open-mindedness, and expects the same level of professionalism and ethical practice from our defense counterparts. The office will advocate for parity of pay and resources for public defenders.
- SCDAO's strong relationships with law enforcement agencies throughout Suffolk County represent a key ingredient to the just resolution of cases. SCDAO expects candor from officers, treats them with respect, and provides assistance with critical investigations whenever our help is needed.
- SCDAO's responsibility to the people we seek to confine does not end when a sentence is imposed. SCDAO believes in the capacity of people to grow and to change, and we will advocate for community reintegration when it is clear that a person no longer represents a safety risk and has demonstrated their commitment to becoming a stable, productive member of our community. We will encourage our agency and community partners to implement humane, evidence-driven practices proven to reduce recidivism.
- SCDAO holds people accountable who commit harm. This responsibility will always be done in a manner that respects the dignity of those charged. Procedural justice principles will always direct our process and the desired outcome is always a fair and just resolution that contributes to safe and productive community membership.
- SCDAO will always seek community-based accountability when appropriate. This accountability will always be commensurate with the facts and circumstances of each specific case. Incarceration, if appropriate, will only be recommended when any other recommendation would compromise the safety of an individual and/or the community.



# Appeals

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Much of the conversation about criminal justice reform focuses on the beginning of a potential prosecution, from the decision to arrest, to the choice of what cases to divert, or what crime(s) to charge, and whether to offer to negotiate a plea or to take a case to trial. Each person ultimately convicted of a crime, however, can appeal that conviction. The Appeals Court and Supreme Judicial Court don't retry cases or hear new evidence. They review the trial court's activities for legal error. Appellate cases can, and often do, have a greater impact on the legal system beyond the "one" case. The courts' decisions become "case law" and create the precedent that dictates how criminal laws are applied going forward. Because these cases can have such critical impact to one person and to the criminal justice system, as District Attorney, I will be conducting a full review of all pending Suffolk County appellate cases. My team will ensure that the appellate cases we are pursuing are consistent with our new policies — particularly SCDAO's Diversion & Declination Policy. If a case on appeal would have been declined had it started under my administration, then we will take steps to dismiss the appeal.

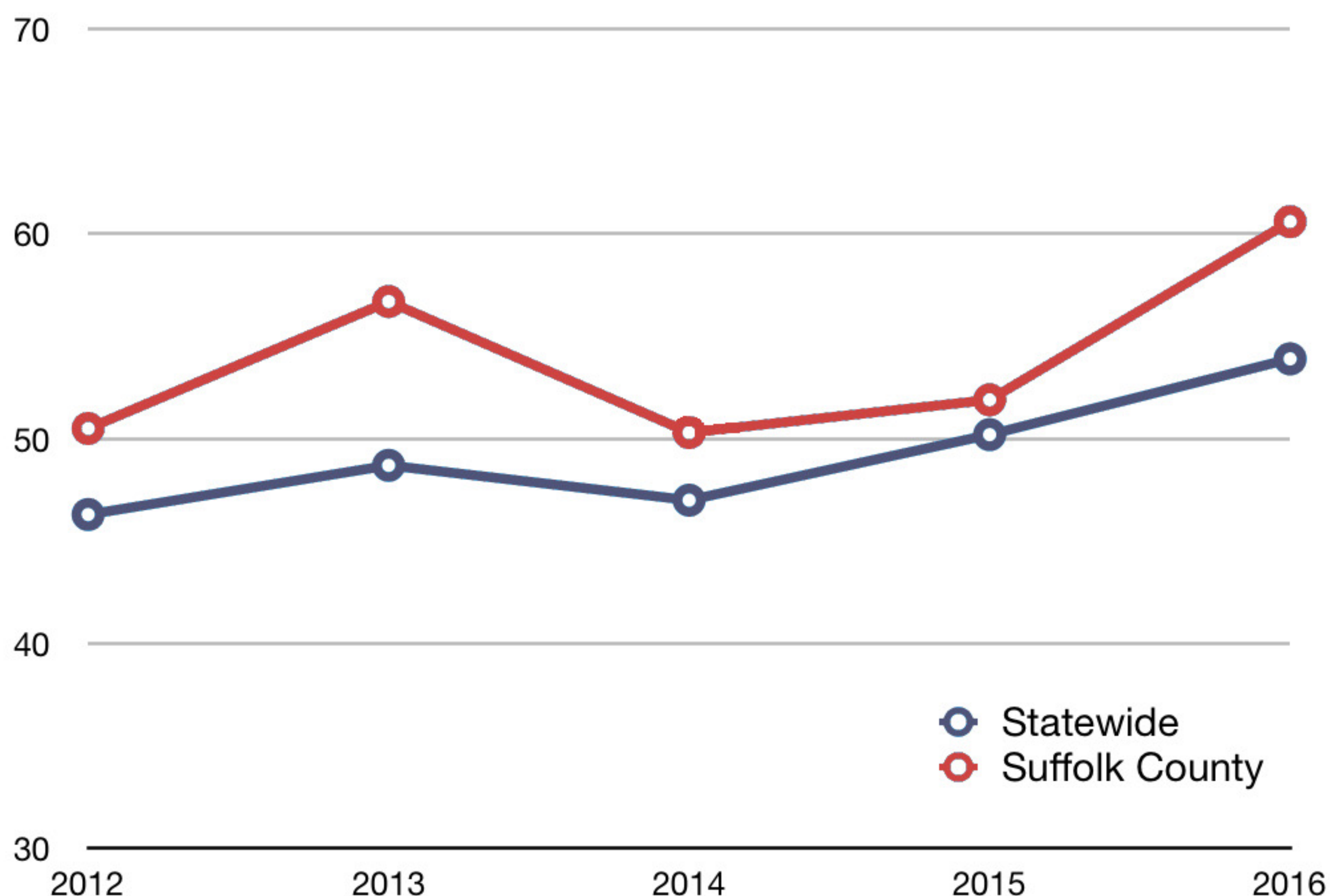
Every prosecutor — whether deciding to decline to prosecute a case or appearing before the Supreme Judicial Court — has the responsibility of a minister of justice and not simply that of an advocate. A prosecutor in Suffolk County will always hold this responsibility with a deep commitment to the principles of equity and fairness. I pledge that our mission to keep our communities healthy and safe by building a criminal justice system that works for everyone will stretch from the district and municipal courts to the Supreme Judicial Court.



# Cash Bail, Pre-Trial Detention & Presumptive Release

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**Pre-trial Detention as a Percentage of the MA Jail Population, 2012-2016**



Source: Massachusetts Sheriffs' Association Monthly  
HOC Count Sheets (as of July 1 of each fiscal year)

By statute, bail is designed to ensure appearance in court. The Massachusetts Supreme Judicial Court (SJC) reinforced this principle in the *Brangan* decision, explaining that where no §58A petition has been filed, it is improper for judges to set unattainable bail based on public safety arguments that would be typically advanced in a §58A hearing. Although dangerousness



# Cash Bail, Pre-Trial Detention & Presumptive Release

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may be a factor in conditions of release, a judge “may not consider a defendant’s alleged dangerousness” in setting the bail amount. *Commonwealth v. Brangan*, 477 Mass. 691 (2017).

Consistent with Massachusetts bail statutes and Supreme Judicial Court decisions, our office’s official policy on cash bail and pre-trial release will be a presumptive recommendation of release on personal recognizance without conditions.

This presumption will only be rebutted if there is clear evidence of a flight risk. When evaluating prior defaults, ADAs should work with defense counsel to determine whether there were legitimate justifications for missed court appearances. Justifications for past defaults will be considered and weighed.

To deviate from the presumption, the line ADA must first request and receive supervisory approval. If the prosecutor deviates from this presumption, they should ask for the least restrictive condition(s) possible, and not request a condition(s) that is likely to result in detention (such as curfews during the hours of scheduled employment, unaffordable or inaccessible treatment programs or services). This presumption in no way compromises our ability to move for a dangerousness hearing pursuant to G.L. c. 276, § 58A.

We will also not adopt a reflexive policy of simply claiming everyone is a flight risk, or is dangerous and thus require dangerousness hearings for every individual instead of the previous practice of requesting cash bail.

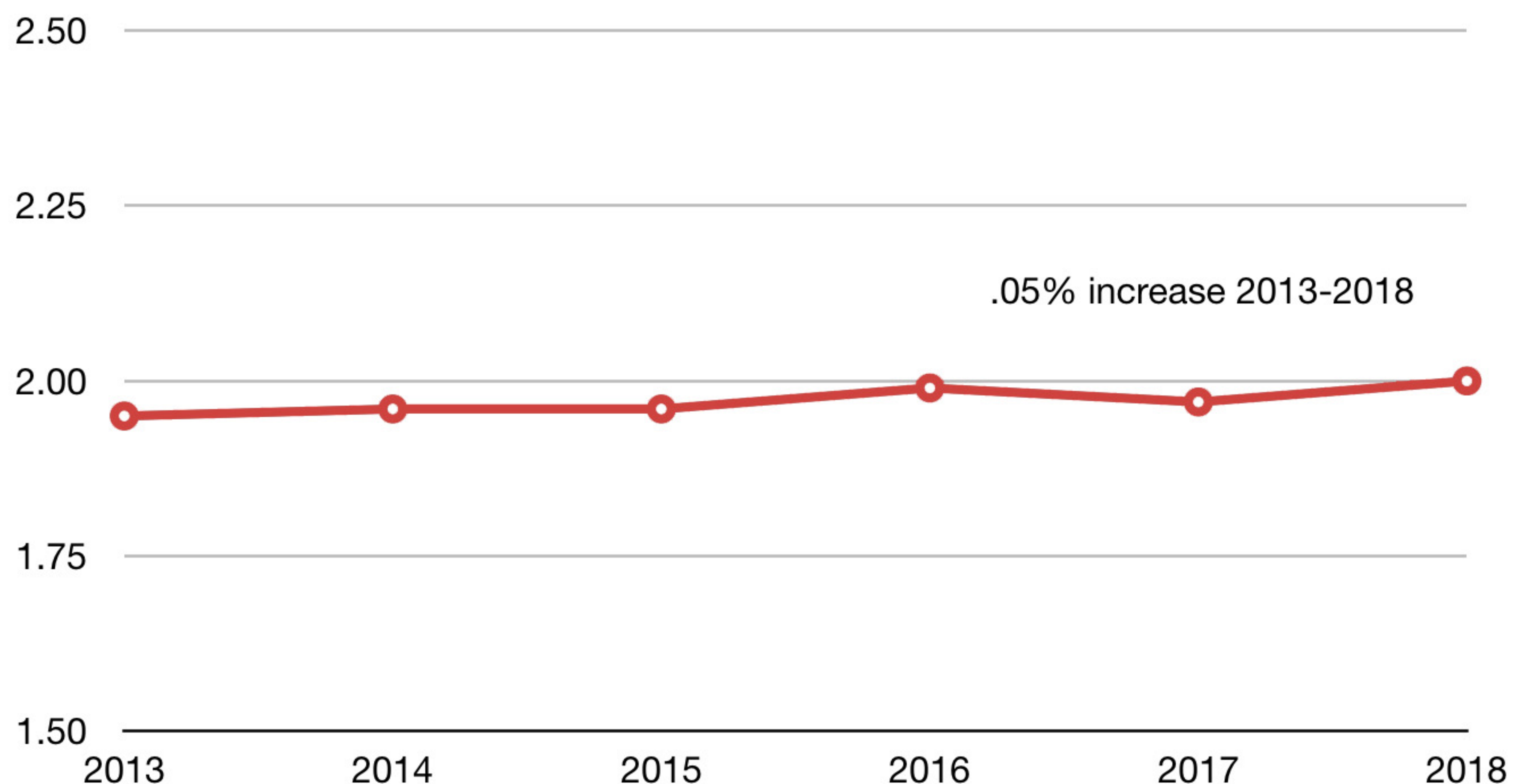
In an effort to apply this standard retroactively, we will identify a list of all persons currently held on an amount of cash bail \$25,000 or less and re-assess bail through this release presumption framework.

The full text of this office’s Cash Bail, Pre-Trial Detention & Presumptive Release policy can be found in [APPENDIX B](#).



# Charging

**Average Number of Charges Per SCDAO Case Filed, 2013-2018**



Source: SCDAO Internal Data (as of Feb. 2019)

Though the total numbers of both SCDAO cases and charges filed has declined in recent years, the above graphic shows that the average number of charges per case has remained relatively static.

Criminal charges carry permanent, often irrevocable consequences. In adherence with their special ethical obligations, Suffolk County ADAs will only seek to arraign charges where there is a good faith belief that probable cause to support the charge(s) exists and the evidence at charging unconditionally supports presenting the charge(s) to a fact finder.

No person should be penalized for exercising their Constitutional right to litigate motions or proceed to trial. In most circumstances, the offer of a charging or sentencing concession made at one point in the proceedings should remain on the table through the pendency of the case. We are mindful, however, that survivors of child abuse, sexual assault, domestic violence, and other violent or hate-based offenses may be re-traumatized by



testifying at trial and we will seek to keep their best interests in mind at all times. In such cases, offers made contingent upon relieving the victim of the obligation to testify may no longer be appropriate if the victim takes the stand. It should also be noted that acceptance of responsibility by a charged individual at an earlier stage of the litigation is always a relevant factor for recommended disposition. ADAs should consult with their supervisors when they believe a sentencing offer should be amended to reflect a material change in circumstances.

All offers made to defense counsel should be dated and memorialized in writing inside the file, or on the file jacket.



# Collateral Consequences

## Some Examples of Potential State and Federal Collateral Consequences of a Conviction of Possession with Intent to Distribute Cocaine or Heroin

FEDERAL CONSEQUENCES	FEDERAL AND STATE CONSEQUENCES	
<b>IMMIGRATION</b> <ul style="list-style-type: none"><li>○ Deportation</li><li>○ Ineligibility for visa or admission to the U.S.</li><li>○ Ineligibility for asylum</li><li>○ Revocation of/ineligibility for certain legal statuses</li><li>○ Ineligibility for naturalization or adjustment of status</li></ul>	<b>BENEFITS &amp; INSURANCE</b> <ul style="list-style-type: none"><li>○ Ineligibility for certain unemployment benefits</li><li>○ Ineligibility for certain federal benefits and loans</li><li>○ Ineligibility for public housing</li><li>○ Ineligibility for food stamps</li><li>○ Denial of certain veterans benefits</li></ul>	<b>EMPLOYMENT</b> <ul style="list-style-type: none"><li>○ Ineligibility for hundreds of professional licenses</li><li>○ Ineligibility for certain board and commission membership</li><li>○ Removal from public office and ineligibility for civil service employment</li><li>○ Ineligibility for military service</li></ul>
<b>STATE CONSEQUENCES</b>	<b>REHABILITATION</b> <ul style="list-style-type: none"><li>○ Assignment to a drug treatment or community service</li></ul>	<b>MISCELLANEOUS</b> <ul style="list-style-type: none"><li>○ Public criminal record</li><li>○ Expulsion from school</li><li>○ Ineligibility for voting (while incarcerated)</li><li>○ Ineligibility for gun license</li><li>○ Ineligibility for jury service</li></ul>
<b>FAMILY</b> <ul style="list-style-type: none"><li>○ Denial of foster care, adoption, and kinship care</li></ul>	<div>Source: Harvard Law School Criminal Justice Policy Program</div> <div>See: National Inventory of Collateral Consequences of Conviction <a href="https://niccc.csgjusticecenter.org/">https://niccc.csgjusticecenter.org/</a></div>	
<b>PRIMARY LEGAL SOURCES</b> <ul style="list-style-type: none"><li>● Mass Constitution, MA Gen. Laws, MA Code of Regs.</li><li>● US Code, Code of Fed. Regulations</li></ul>		

Since taking office, I have heard countless stories of Suffolk County residents terminated from existing jobs, and/or denied employment, admission to schools, housing and other benefits on account of open or closed charges on their criminal records. Going forward, staff in this office shall carefully consider, and factor into all case decisions, potential collateral consequences and harms that may arise at any point along the spectrum of system involvement.

This applies but is not limited to: any and all financial costs and penalties; statutory GPS tracking device restrictions; mandatory employment disqualification; registration as a sex offender, etc. Our office is currently working in collaboration with the Criminal Justice Policy Program at Harvard Law School to map some of the thousands of collateral consequences that flow from system involvement, and we intend to release education and training resources in the future.



# Community Engagement

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Louis D. Brown Peace Institute's Annual Mother's Day Walk for Peace

Many members of this office currently maintain deep relationships with our community in Suffolk County, and in particular, survivors of crime. Over the last several months, I have met with a number of survivor-focused agencies and had countless conversations with members of our community that have been impacted by crimes and violence. I will continue to have these meetings and conversations and expect our staff to continue building and strengthening these critically important relationships.





Rachael reading to students in a Boston Public School classroom

Additionally, I would like us to begin building stronger relationships with residents of neighborhoods that are victimized, prosecuted, and incarcerated at higher rates than others. These relationships also include and extend to our neighbors serving sentences, and those who are returning home from incarceration.

For example, I have personally committed to meeting with members of the African American Coalition Committee at MCI Norfolk, and to visit other jail and prison facilities within the Commonwealth where people are serving sentences. These relationships, with all members of our community and neighborhoods, are critical to ensure the principles of procedural justice for all.



I am proud that I have involved the community from the start. From creating a diverse and inclusive Transition Team that truly represents Suffolk County — including members of law enforcement, the judiciary, and the criminal defense bar, as well as survivors and returning citizens — to having community input and transparency regarding the decisions made by our office everyday.

Finally, the office will now be holding meetings within the community to report out on our work and policies and to hear directly from the people we serve. Our first community meeting is scheduled for March 28, 2019 at Hibernian Hall in Roxbury. Our next community meeting is scheduled in June 2019 and will be held in Chelsea.



# Crime Survivors

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A young girl lays flowers at the Garden of Peace Memorial. Credit: Christopher Evans

Crime survivors and their families often experience severe trauma that negatively impacts their health and interferes with their ability to care for their families, to work, and at times, even to function. We prioritize helping crime survivors find the support they need, regardless of their participation in ongoing cases. We also prioritize communication and transparency with crime survivors as they navigate the justice system and receive trauma response services.

It is now the policy of this office that victim-witness advocates meet with survivors and other impacted parties to fully explain the range of potential outcomes and seek their input on how they would prefer to see the office proceed.



Incarceration, probation, diversion, and restorative justice all offer varying forms of accountability and it is our responsibility to inform survivors on each. Our goal is to help each survivor and their affected family members make the best and most informed decisions about what meets their personal healing and recovery needs. At the same time, prosecution strategy and sentencing recommendations are ultimately our responsibility. Survivor input is one of many critical factors to be considered as we seek an appropriate, proportional outcome in every case.



# Data Collection & Analysis

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We are an office that is committed to an evidence-driven approach to public safety, transparency, and the implementation of innovative policies and practices. Capturing reliable and consistent data in real time is therefore essential. Our office is working with leading experts in the field of data science and technology. Our goal is to conduct an internal data collection and systems audit so that we can make our data collection practices consistent, reliable, and user friendly. We are fully aware of how important proper levels of staffing are to capture data consistently, and any policies and guidelines we release will take this fully into consideration.

In the meantime, all ADAs must record the following information, in addition to all other pertinent case information, on/in their case folders, and administrative staff should enter this information into our data system (DAMION) in a timely fashion:

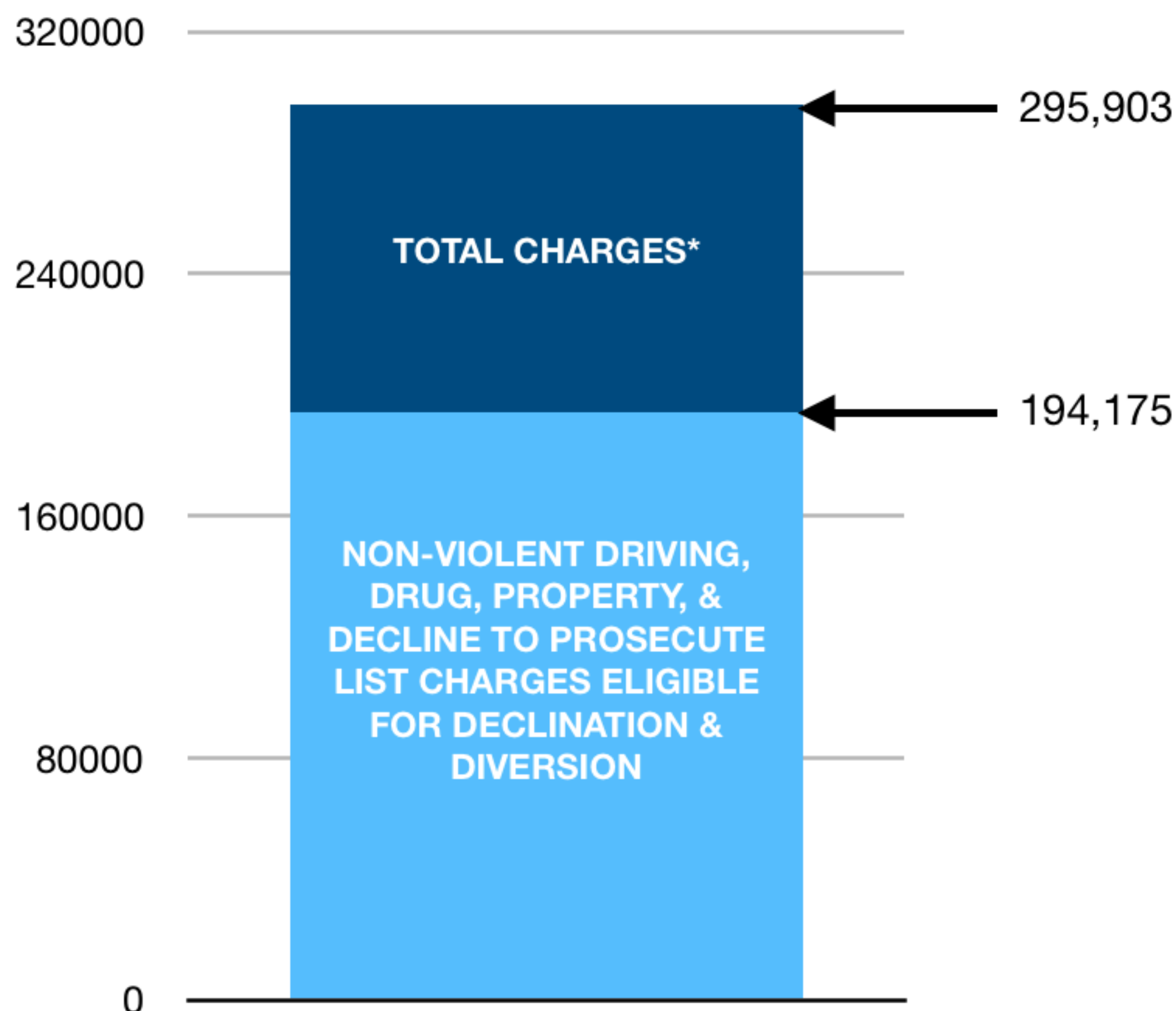
1. Race of all persons charged from the Board of Probation record (BOP), and if the information is not available in the BOP, then from the police report;
2. Disposition and type;
3. Bail amount/conditions requested AND imposed;
4. Disposition offered by the Commonwealth;
5. Disposition entered by the Court (including type of disposition, length, conditions);
6. In the event of a DWOP, the specific reason for dismissal (e.g. witness did not appear, victim did not appear, no evidence).



# Declination & Diversion

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## 62% of the Most Commonly Charged SCDAO Offenses Reflect Low-Level, Nonviolent Conduct



\* Charges referenced in this graphic are those that have been filed 100 or more times since 2013

Source: SCDAO Internal Data (as of Feb. 2019)

I made a promise to the residents of Suffolk County that for low-level, non-violent offenses, I would emphasize declination or diversion whenever possible. That decision was part of a strategy to achieve two important goals: first, to reduce the footprint of the criminal justice system where it served no public safety interest, and second, to allocate more of our prosecution resources to the serious offenses that harm people, families, and the community as a whole.

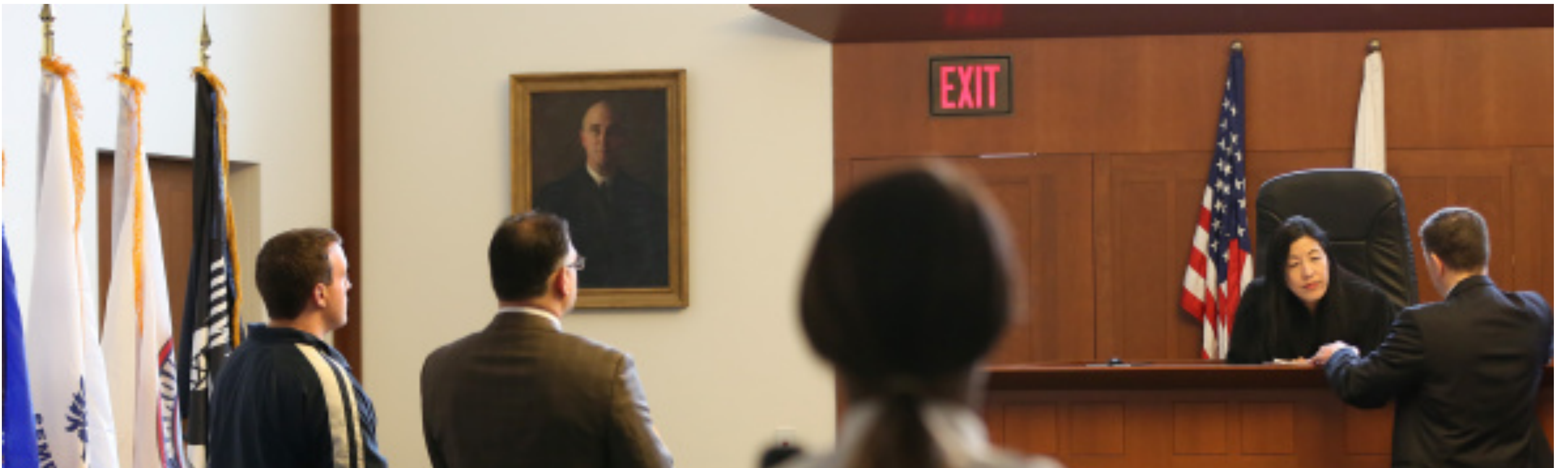


## Declination & Diversion

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Based on my in-depth consultation with representatives from law enforcement, the criminal defense bar, the judiciary, and the neighborhoods we serve, I identified 15 charges that in most cases are best addressed through diversion or declined for prosecution entirely. In addition to being low-level, non-violent offenses with minimal long-term impact, they are most commonly driven by poverty, substance use disorder, mental health issues, trauma histories, housing or food insecurity, and other social problems rather than specific malicious intent.

Formulating and announcing this targeted policy was an important new step, but recent data show that the philosophy underlying it is neither radical nor untested: over the past five years, low-level drug charges, driving offenses, and property crimes were over 12% more likely to be dismissed or diverted than more serious cases in Suffolk County – corresponding with a decline in both violent crime and property crime across the county.



Judge Sinnott presiding in Boston Veterans Treatment Court. Credit: Pat Greenhouse/Globe Staff

Taking a comprehensive and coordinated approach to scaling back prosecution of these charges will improve upon recent practices to benefit individuals and the community. Charges of this type comprise more than 60% of commonly-charged offenses in Suffolk County, and curtailing the use of prosecution, probation, and incarceration to address them will dramatically reduce the application of criminal justice resources to issues better addressed through treatment, services, job training, and education.



Perhaps the best example of the successful implementation of a “diversion as default” model is the Suffolk County Juvenile Alternative Resolution (JAR) program.

By individualizing responses to the spectrum of conduct that can trigger juvenile justice intervention, Suffolk prosecutors assigned to the JAR team have reduced the number of young people arraigned in the Suffolk County Juvenile Court by 60% since 2017 without any corresponding increase in crime. Working with police departments, community-based partner agencies, advocates, and the judges and probation officers of the Suffolk County Juvenile Court, staff assigned to our JAR team have dramatically improved outcomes for system-involved youth while reducing recidivism to the benefit of all involved.

Many of the adults who come before the court each day can likewise be best served by something other than the criminal justice system. Once an appropriate continuum of data-driven treatment and service solutions has been put into place, and the needs of persons in crisis are adequately met in a timely fashion, our staff will be able to begin referring many of them directly to multi-disciplinary public health and therapeutic providers in lieu of traditional prosecution.

This commitment to diversion and accountability without criminal justice system involvement provides the necessary foundation for a reinvestment strategy. This strategy will allow fiscal, staff, and resource reinvestment to focus much-needed attention on our unsolved homicides and to pursue an intelligent, data-driven strategy to impart and reduce violent and serious crimes.

The full text of this office’s Declination and Diversion Policy can be found in [APPENDIX C](#).



# Discharge Integrity Team

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On March 11, 2019, I announced the formation of my Discharge Integrity Team (DIT), a panel tasked with assisting me in performing an outside review of fatal police-involved shootings.

This fulfills my pledge to bring in outside experts for a transparent examination of the facts in every such case. Team members have been selected for their impartiality, reputations for excellence, and specific expertise in community advocacy, criminal prosecution and defense, police investigations, the significant impacts of violence and trauma, and the rules of evidence and criminal practice in Massachusetts courts.

Officer-involved shootings are incredibly complex, emotionally charged, and extremely important to both law enforcement and the community at large.

The DIT members will convene on at least a monthly basis to review the progress of presented investigations. The DIT will meet directly with me to assess the state of the evidence, monitor the direction of the investigation, and examine the procedural steps undertaken by investigators on the ground. They will make inquiries, offer insights, and present objective opinions based on their thorough review.

The innovative creation of an outside review team to assist in officer-involved fatal shootings is believed to be unique in Massachusetts and across the nation.



# Immigration Consequences



Source: Boston Planning & Development Agency

All persons who are harmed, regardless of national origin, must receive full, equal, unfettered access to justice. Local criminal matters always supersede federal civil matters, and this office is committed to making sure all parties with civil or criminal business before our courts in Suffolk County can arrive to and from each and every one of their court hearings without fear of, or interference from, civil immigration authorities.



# Immigration Consequences

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Overall, the city's total foreign-born population increased in the last decade, reaching about 200,000 and accounting for about 29 percent of Suffolk County's general population, according to the United States Census Bureau.

With the assistance of immigration counsel, our office will begin to factor into all charging and sentencing decisions the potential of immigration consequences. I have also directed ADAs that motions filed after a conviction that are based on defense counsel's failure to provide accurate advice about immigration consequences may be assented to (after full review) when it appears that doing so would be in the furtherance of justice.

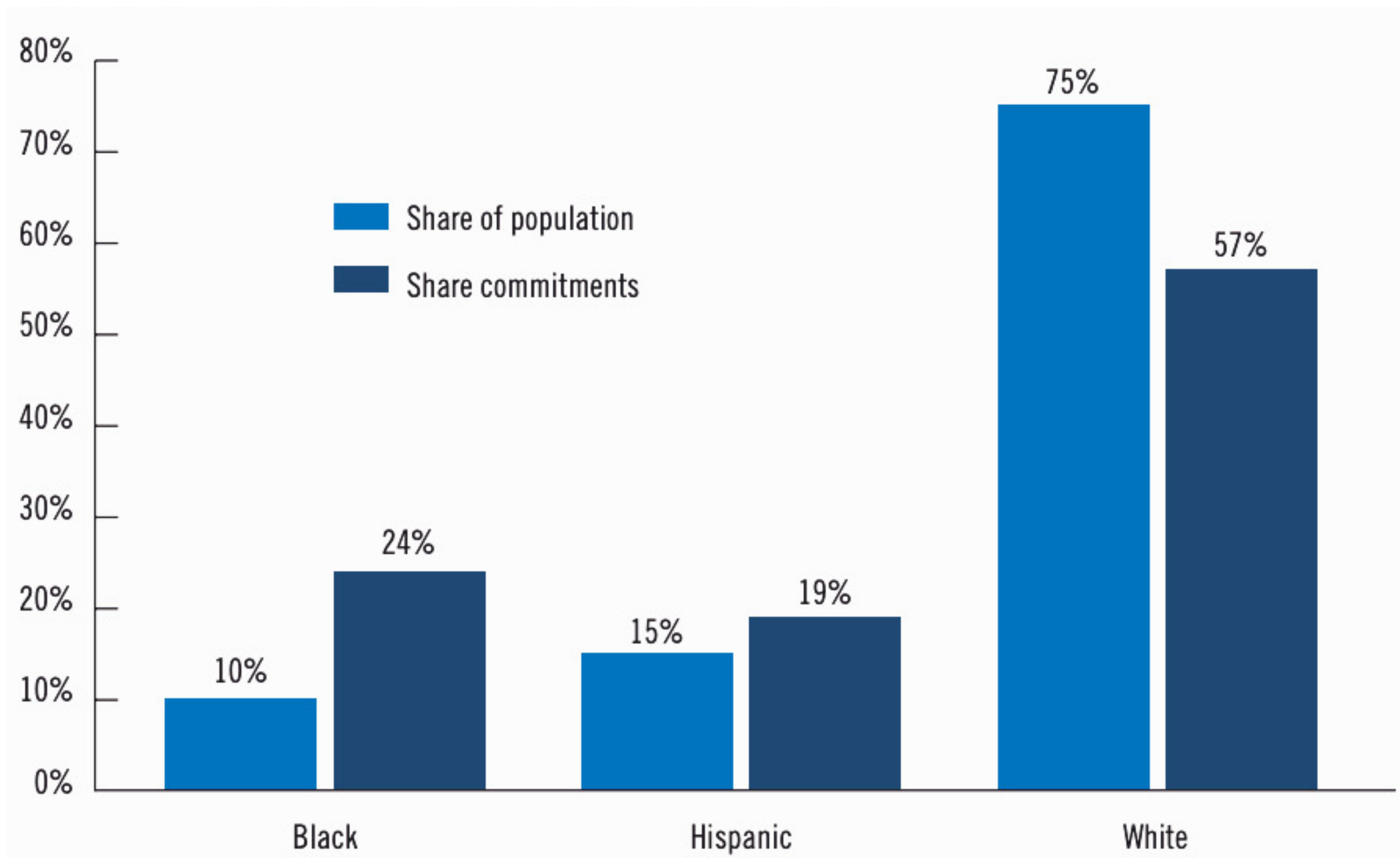
If any ADA, victim witness advocate, or other SCDAO employee observes Immigration and Customs Enforcement officers, Department of Homeland Security officers, or other civil immigration authorities apprehending or questioning parties scheduled to appear in court about residency status in or around the public areas of any Suffolk County courthouse, they are to immediately notify me (the District Attorney), my First Assistant, or my General Counsel.



# Juveniles & Emerging Adults

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## Share of Massachusetts Population Age 18 to 24 Versus Share of State and County Commitments by Race and Ethnicity, 2013



Source: MassINC Analysis of State Sentencing Commission and American Community Survey Data

Our office recognizes social science and brain research showing that the human brain continues to develop until the mid-to-late twenties, especially in the portions of the brain responsible for behavior control, decision-making, and risk. We further recognize data showing that long-term outcomes for teenagers and young adults are substantially better when they have as little contact with the criminal justice system as possible, especially for adolescent behaviors such as fights, disorderly conduct, smoking marijuana, and disrupting school assemblies.



The success of SCDAO's Juvenile Alternative Resolution (JAR) Program is something we will seek to expand and learn from, not only within juvenile court, but also for emerging adults and adults in all courts. Since May 2017, our Juvenile Unit has diverted approximately 60% of the county's juvenile caseload prior to arraignment.

Our outcomes to date have been laudable. Suffolk County has outpaced statewide improvements with respect to decreasing numbers of individuals on high-level supervision, fewer individuals on unsupervised probation, and fewer individuals on post-arraignment, pre-adjudication supervision.

How Young Adults Are Distinct From Youth	How Young Adults Are Distinct from Adults
<ul style="list-style-type: none"><li>■ More cognitively developed<sup>7</sup></li><li>■ More vulnerable to peer pressure and other external influences</li><li>■ More likely to engage in risky behaviors</li><li>■ Seeking autonomy from families/caregivers</li></ul>	<ul style="list-style-type: none"><li>■ More impulsive</li><li>■ Less able to control emotions</li><li>■ Less likely to consider future consequences of their actions</li></ul>

Image Credit: The Council of State Governments (2016)

Because gun crimes, organized drug distribution, and retaliatory violence among juveniles and emerging adults often overlap with one another, we are currently conducting research into data-driven crime prevention strategies, including public health prevention and intervention strategies, that have proven successful in other jurisdictions. Whether by merging teams or working under a single supervisor, the personnel assigned to juvenile intervention, violence impacting communities, narcotics prosecutions, and other disciplines within the office are most effective operating together. Because separate "silos" of knowledge and experience can interfere with the efficient exchange of information among prosecution and advocacy staff, we will seek to facilitate shared access to the most up-to-date information, patterns, and trends while respecting and protecting the privacy rights we all enjoy.



# Mental Health & Substance Use

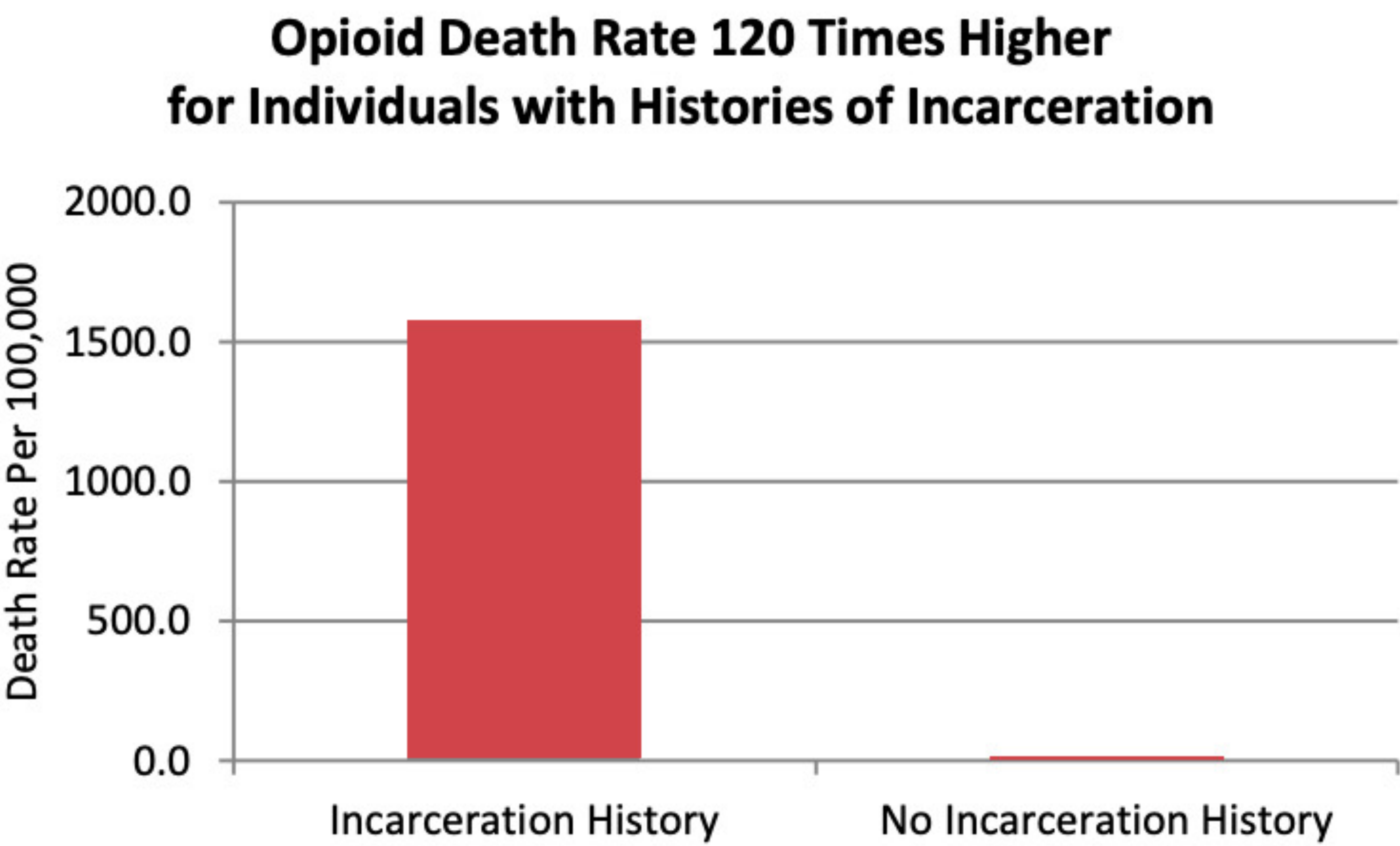
	<b>Number of Opioid-Related Overdose Deaths, All Intent by County, MA Residents: 2000-2017</b>																	
	Massachusetts Department of Public Health <span>POSTED: FEBRUARY 2019</span>																	

County	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total 2000-2017
Barnstable	12	19	21	15	17	20	24	31	22	21	20	19	24	43	53	66	81	67	575
Berkshire	2	3	1	2	6	9	1	8	3	8	4	9	18	22	29	33	36	27	221
Bristol	38	58	66	84	72	78	85	64	84	70	79	82	95	116	146	168	243	243	1,871
Dukes	1	0	1	0	1	2	0	3	1	2	0	0	0	1	5	7	3	2	29
Essex	51	65	55	81	68	80	87	89	65	74	51	57	94	119	209	231	273	311	2,060
Franklin	5	2	1	5	3	4	6	4	2	2	6	6	8	10	11	18	14	9	116
Hampden	32	37	42	46	32	36	46	38	48	46	48	45	59	69	64	96	129	113	1,026
Hampshire	5	5	5	12	8	3	10	14	11	10	12	10	11	30	26	16	36	28	252
Middlesex	64	86	92	115	105	122	118	110	112	124	94	130	122	155	273	333	401	357	2,913
Nantucket	0	1	0	0	0	0	0	1	0	1	1	0	0	1	1	1	2	3	12
Norfolk	29	42	44	43	40	53	49	54	73	65	60	64	71	83	127	161	212	170	1,440
Plymouth	23	25	29	47	28	38	49	52	48	53	41	67	57	86	110	168	188	205	1,314
Suffolk	49	87	98	106	83	66	107	103	74	95	64	85	91	111	145	195	239	255	2,053
Worcester	68	75	71	58	51	63	74	71	78	67	80	82	91	115	162	216	242	264	1,928
Total Deaths	379	506	526	614	514	575	660	642	622	638	560	656	742	961	1,362	1,710	2,099	2,056	15,822

Source: MA Department of Public Health

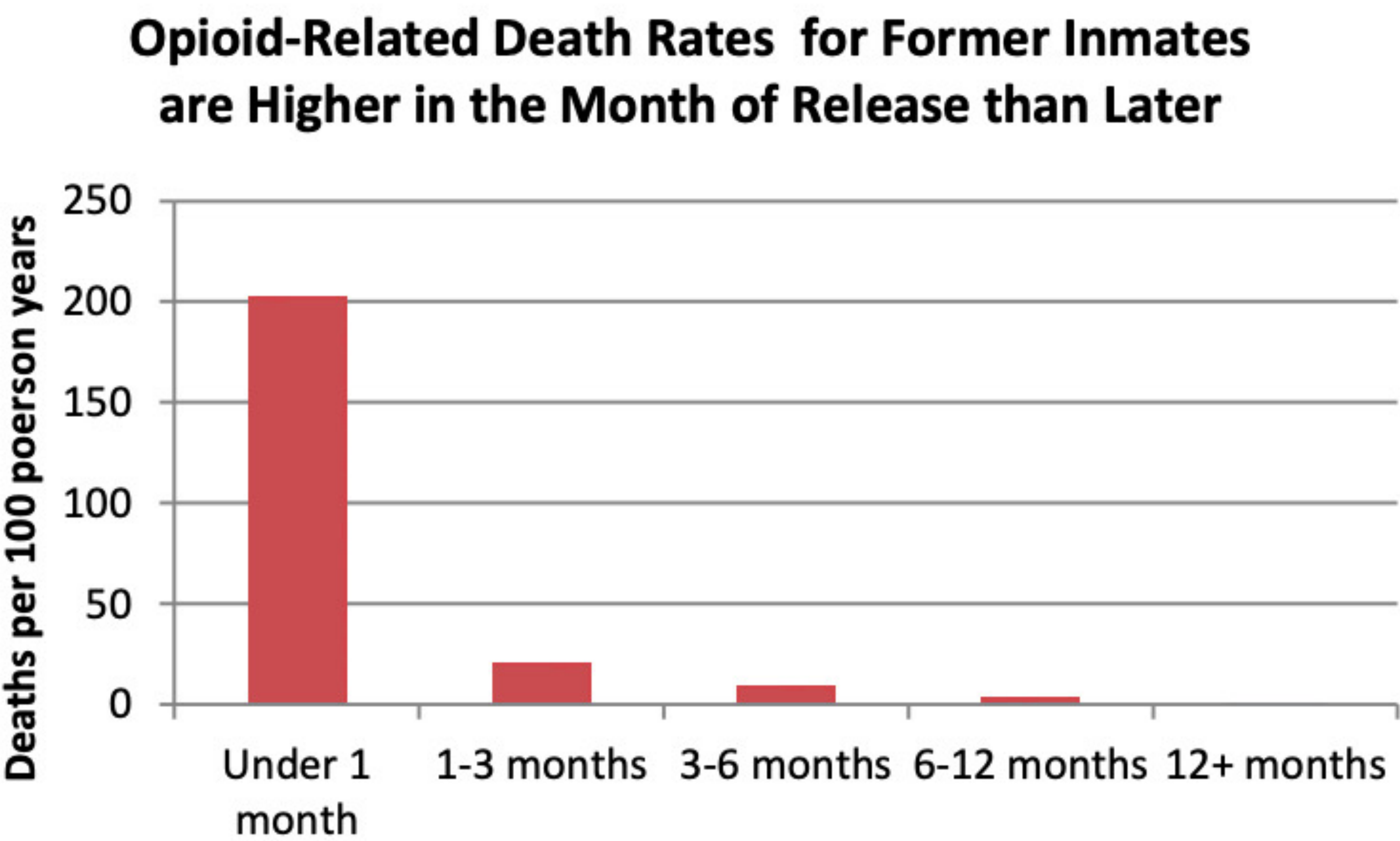
Mental illness, substance use, and the wide spectrum of co-occurring disorders are distinct medical conditions that require specifically tailored treatment and services rather than punishment. Few policy failures illustrate the need to rely on data, science, and public health principles more than the catastrophically failed “War on Drugs.” Supervised consumption sites, safe needle exchange and cleanup programs, widespread availability of drug test strips, and the lifesaving drug Naloxone to prevent overdoses, are proven to save lives, reduce needle litter, and improve access to treatment and recovery. I support, and will strongly consider, these and other proven harm reduction strategies.





Source: MA Department of Public Health

In Massachusetts from 2011-2015, 25% of people incarcerated by DOC received treatment. During the same time period, the opioid overdose death rate was 120 times higher for those recently released from incarceration compared to the rest of the adult population. In Suffolk County, according to the latest data released in February 2019, the number of people who suffered fatal overdoses increased 6.7% from 2016 to 2017.

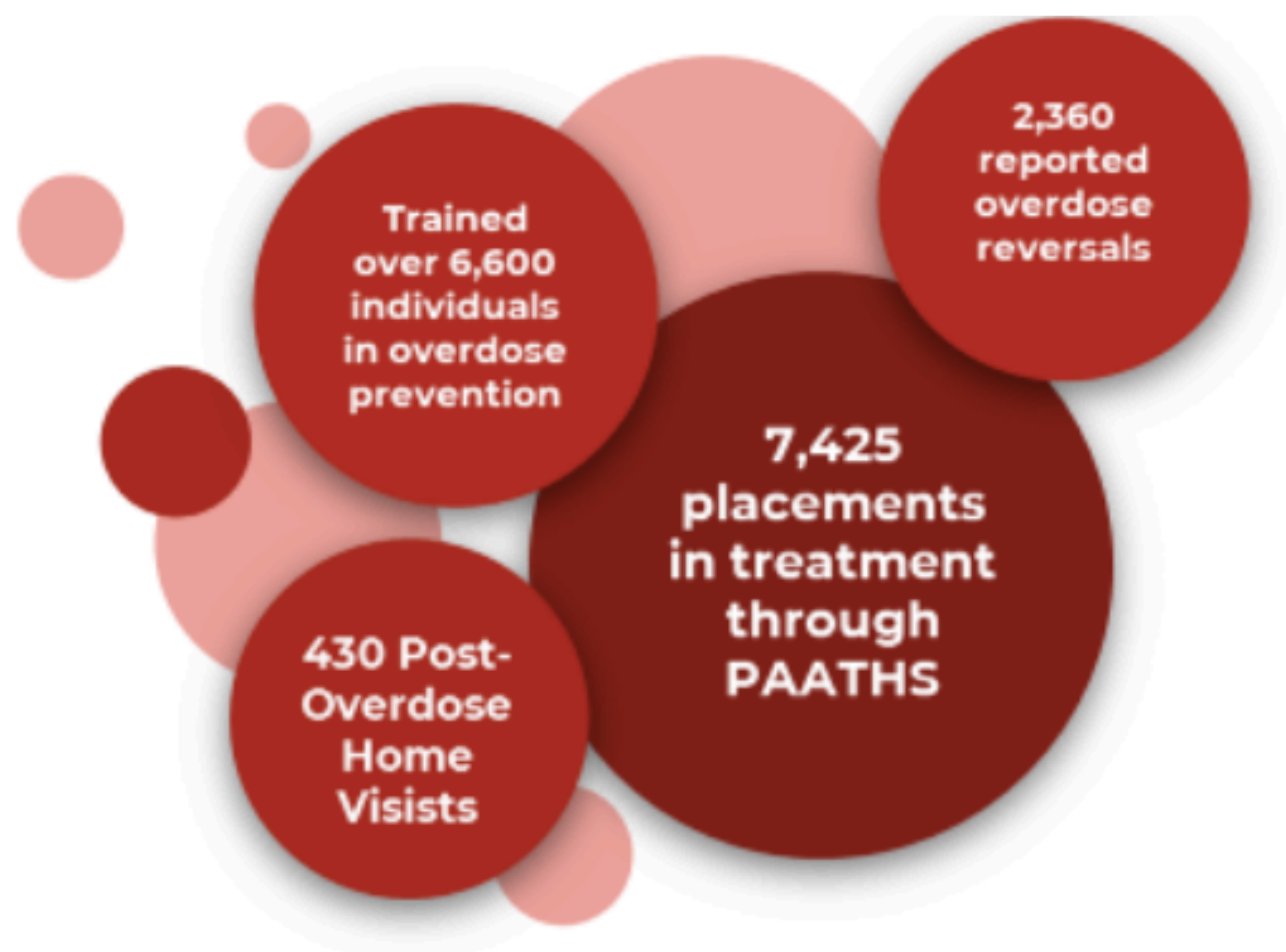


Source: MA Department of Public Health



## **Substance Use Treatment Placements, Home Visits, and Educational Trainings Lead to Fewer Drug Overdoses**

### **Recovery Services By the Numbers, 2018**



Source: City of Boston Recovery Services

Arrest and incarceration are not effective solutions for substance use disorders. Our office is committed to identifying and seeking the expansion of a proper continuum of community-based mental illness and substance use disorder treatment providers so that when people in crisis are brought to us by our law enforcement partners (and ideally before that), properly matched treatment programs will be in place so that our staff can defer and decline prosecution in all possible cases involving mental illness and/or substance use disorders.

I intend to work closely with the Legislature, Mayors, City Managers, and City Councils in Suffolk County, to get more clinical and therapeutic service providers in place to help those who are in desperate need of treatment.



The scarcity of accessible, affordable treatment options for persons diagnosed or struggling with mental illness and substance use disorder has unfairly left police and prosecutors across the country with responsibilities that go far beyond their traditional training, expertise, and mandate. Using traditional public safety resources to address complex public health problems hasn't just deprived individuals of the appropriate rehabilitative services. It's relegated too many people with untreated mental illness and substance use disorders to the criminal justice system, contributed to mass incarceration, and destabilized communities by incarcerating caregivers and wage-earners.

It must be noted, that when drug and opioid-related issues were ravaging Black and Latinx communities in the 1980s and 1990s, there was not the current sense of urgency to call it a public health crisis. Instead, people were arrested, prosecuted, and incarcerated. Now that the demographics of the impacted community have shifted, the government, law enforcement, and the general public - possibly because the problem is now impacting them and their communities - suddenly have compassion and want to label this crisis the health issue it always has been. Learning from past mistakes will help us start the healing process in communities that have been targeted, marginalized, and forgotten by our prior failed policies and attitudes.



# Plea Negotiations

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We will be developing a set of plea guidelines to reframe our objectives in the criminal justice system. Our ADAs will have clear direction about what is expected of them. Going forward, plea negotiation within the office, specifically for cases charged in any Division of the BMC or Chelsea District Court, will be driven by the following overarching principles:

- Incarceration is a last resort;
- Diversion should be offered whenever possible, and;
- Substance use disorder, poverty, mental illness, and the behaviors that often result from them, should never serve as a justification for incarceration.

The above principles will always be balanced with any risk to any individual, persons, and the community.

In all plea negotiations that involve committed time or probation supervision, ADAs should seek to work with defense counsel to fashion sentences with as many incentives built into the “front end” as possible. These incentives should be specifically tailored to the individual person and their specific needs and interests. For example, if a person interested in education gets a GED, high school diploma, or college degree while incarcerated or on probation, then ADAs can request that the court incentivize the enrollment and completion of the designated programs by a “built-in” reduction of post-incarceration supervision in the court’s sentence. Other innovative approaches will be pursued, tested, and evaluated.

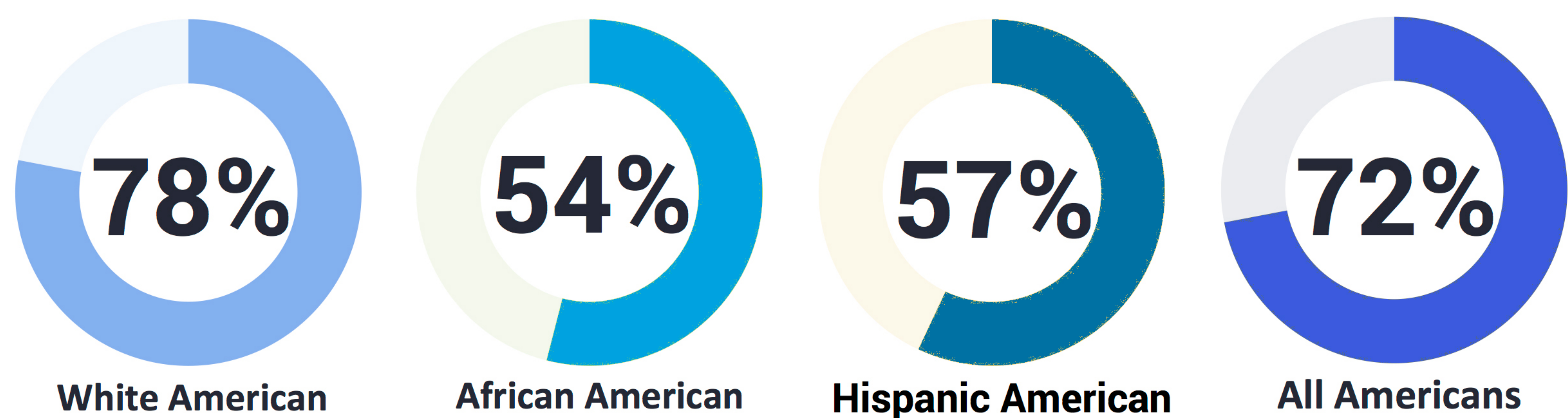
All plea offers made by our office will be memorialized in writing and placed within the case file. They will be dated, include the name of opposing counsel the plea was communicated to, and will indicate all terms of the plea offer.



# Restoring Trust

According to the Washington Post, Suffolk County is home to one of the worst racial disparities in homicide clearance rates in the country.<sup>10</sup> Many factors impact investigations and we recognize the challenges faced by our law enforcement partners. Still, a report by Boston Magazine found that over a nearly three-year period starting in 2014, 96% of non-fatal shootings were unsolved.<sup>11</sup> In 2016, The Sentencing Project reported Massachusetts’s Hispanic residents suffered the worst incarceration rate disparity in the United States when compared to their white counterparts.<sup>12</sup> Like most prosecutors’ offices serving large metropolitan jurisdictions our size, our office has a backlog of more than 1,000 unsolved homicides, and the overwhelming majority of survivors awaiting justice are Black and Hispanic.<sup>13</sup>

## How Willing Are Americans to Report a Crime? % Who Would Definitely Report a Crime



Source: Cato Institute/YouGov 2016 Criminal Justice Survey

Racial disparities such as these erode confidence in the District Attorney’s Office and the criminal justice system. They cause residents who live in neighborhoods that are prosecuted and incarcerated at higher rates than others<sup>14</sup> to be fearful of working with and fearful of trusting law enforcement.





Credit: Matthew J. Lee/Globe Staff

To uphold our commitment to public safety, repair relationships with the community, and restore trust, we must use data to identify these and all other investigatory and prosecutorial disparities, vigorously and honestly interrogate the reasons for them, and swiftly eliminate them. We must also look back and consider relief for all persons who may have been charged and convicted at higher rates due to poverty, race, religion, sex, gender, or identity.

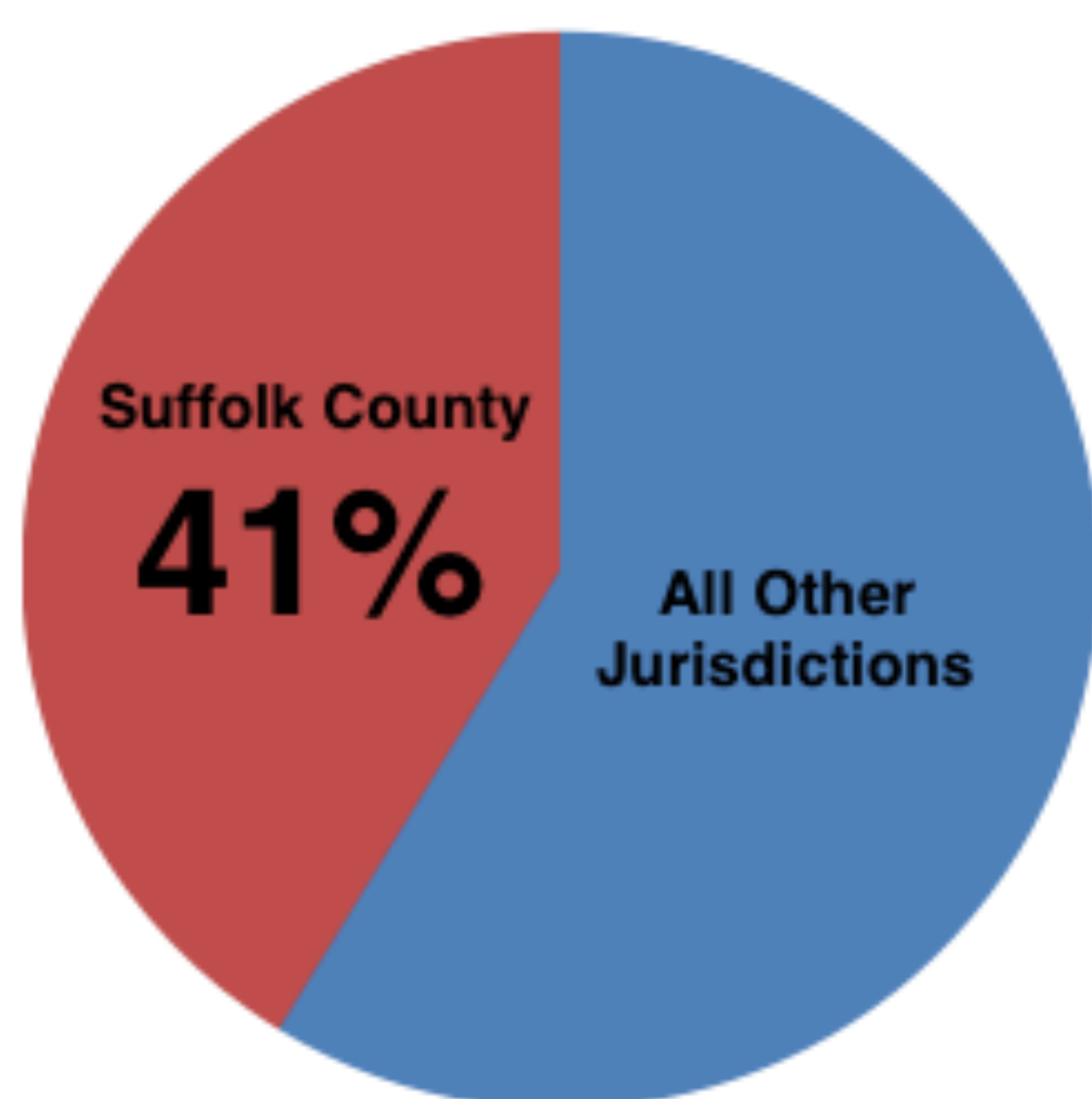
To be clear, I am fully aware that no newspaper article or statistic can fully capture the intense complexity involved in the causes and outcomes of violent crimes. The Boston Police Department has worked tirelessly to build community trust and has expanded its capacity to look at cases that have long gone unsolved. So too have other law enforcement agencies in Suffolk County. Restoring trust, however, is a task and assignment for us all. My office, every employee, will work with all of our partners and communities, in this endeavor.



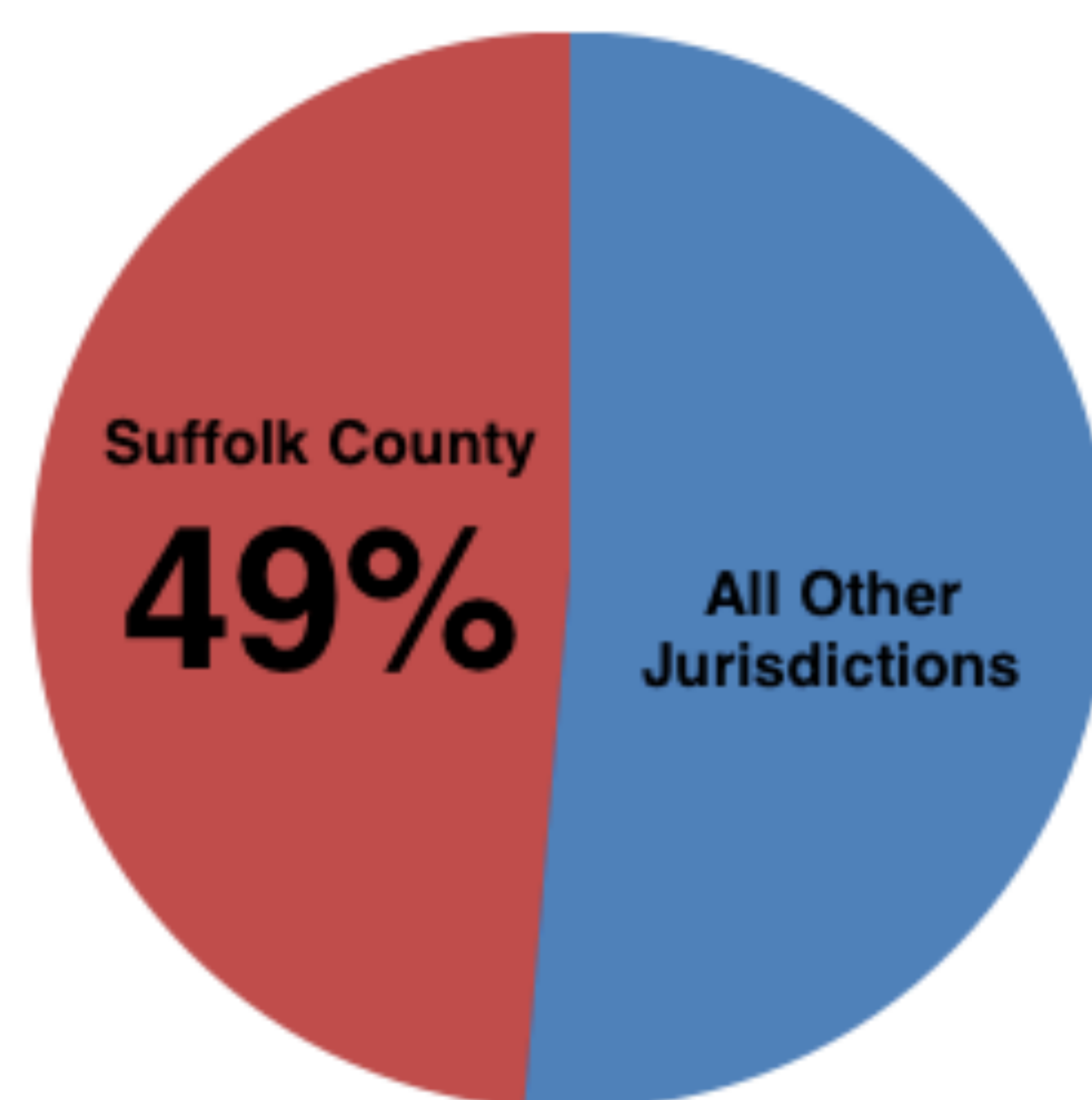
# Witness Protection

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Witness Protection Cases  
Statewide, 2007-2014



Witness Protection Spending  
Statewide, 2007-2014



Source: Massachusetts Witness Protection Program Reports, 2007-2014

Our ability to seek justice depends on the cooperation and participation of witnesses who feel safe calling police, speaking with investigators, and testifying before a grand jury or at trial. If a victim or witness has a safety concern that could interfere with that mission, we must strive to overcome it in order to best serve the interests of justice.

Since the creation of Massachusetts’ Witness Protection Program in 2006, Suffolk County has led the Commonwealth in using state funds to protect victims, witnesses, and their families from retaliation. The most recent data available shows that our office handled more than 40% of the entire state’s cases approved by the Witness Protection Board and utilized nearly half of the entire state’s witness protection funding. Suffolk County victim-witness advocates are regularly called upon to help with safety planning, emergency housing, and other needs. We will continue and improve upon our practice of training our staff to offer and use these services effectively. And, we will make sure that the community is aware of these resources, protections, and services.



# CLOSING MESSAGE

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March 25, 2019

Team:

Once again, I am deeply grateful to everyone whose guidance, counsel, caution, and inspiration were instrumental in assembling these pages. From members of the community to members of law enforcement, from prosecutors to defense attorneys, from judges to returning citizens, and from students to academics, they shared the lessons of their experiences with me, not for personal gain, but for the public good. I am especially indebted to those members of the office who helped me navigate the route from idea to implementation in the finest District Attorney's office in the Commonwealth and the nation. I could not be more proud, or more grateful, to be your DA.

The goals and values in this memo are the philosophical foundation for a real-world job: the task of transforming criminal justice in Boston, Chelsea, Revere, and Winthrop. What you've just read is a starting point, not a final destination, for the work we will undertake together. I look forward to partnering with each of you, and with the residents of every neighborhood in Suffolk County, in the weeks, months, and years to come.

A handwritten signature in white ink, appearing to read "Rachael", with a large, sweeping initial "R" and a stylized, cursive script for the rest of the name.



# End Notes

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<sup>1</sup> SCDAO is working with leading academic experts in the field of data technology and science to conduct a rigorous data and data systems audit. Some of the information contained in this memo is based on preliminary scans of SCDAO data. Therefore, any conclusions drawn from SCDAO internal data in this memo are to be drawn tentatively, on available data only, and are not to be considered final until our data audit is complete.

<sup>2</sup> In Massachusetts, the recidivism rate has ranged between 40-70% for several decades. See: <http://massinc.org/wp-content/uploads/2016/07/MA-Interim-Report-3-Slide-Deck.pdf>; <https://www.urban.org/sites/default/files/publication/31671/411657-Massachusetts-Recidivism-Study.PDF>

<sup>3</sup> See: <https://www.prisonpolicy.org/reports/pie2018.html>

<sup>4</sup> See: <https://www.ncbi.nlm.nih.gov/pubmed/28973924>; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780417/>; <https://www.princeton.edu/~wdobbie/files/bail.pdf>

<sup>5</sup> See: <https://csgjusticecenter.org/nrrc/publications/economic-perspectives-on-incarceration-and-the-criminal-justice-system/>; <http://www.ncsl.org/research/labor-and-employment/barriers-to-work-individuals-with-criminal-records.aspx>

<sup>6</sup> See: [https://www.ct.gov/opm/lib/opm/cjppd/cjabout/2018\\_mid\\_year\\_updates\\_memo\\_final.pdf](https://www.ct.gov/opm/lib/opm/cjppd/cjabout/2018_mid_year_updates_memo_final.pdf); <https://www.theday.com/article/20180924/NWS04/180929683>

<sup>7</sup> See: <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-diversion.aspx>

<sup>8</sup> Although crime is reported down in many Suffolk County neighborhoods, violent crime remains level, and in some cases has risen, particularly in the neighborhoods most impacted by gun violence. Massachusetts is considered a national leader in gun violence policy and prevention, yet we must continue to work towards reducing violent crime in all of our neighborhoods.

<sup>9</sup> See: <https://www.mass.gov/lists/county-population-reports#fy2017-county-population-reports->; <https://massinc.org/wp-content/uploads/2018/05/Revisiting-Correctional-Expenditure-Trends-in-Massachusetts.pdf>

<sup>10</sup> See: <https://www.washingtonpost.com/graphics/2018/investigations/black-homicides-arrests/>

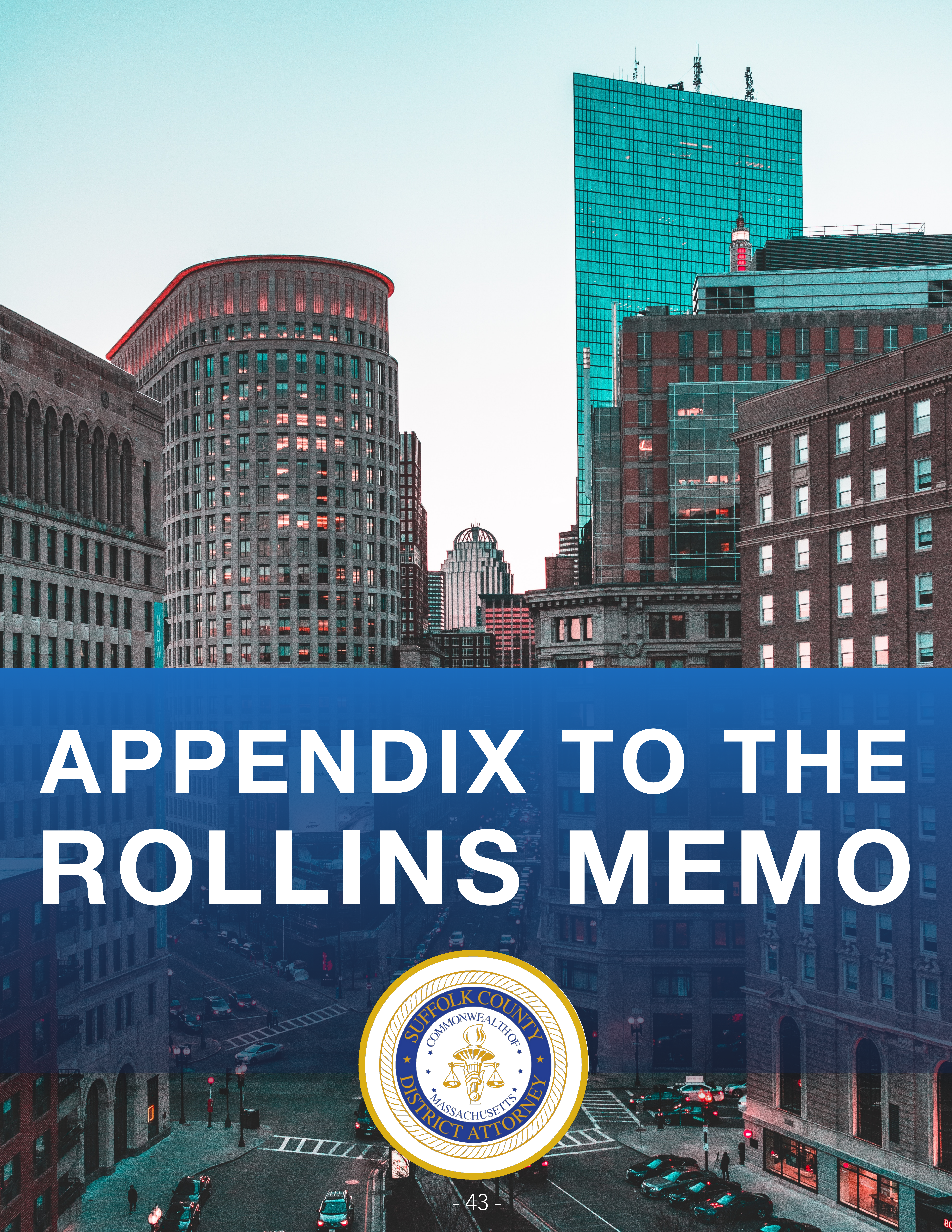
<sup>11</sup> See: <https://www.bostonmagazine.com/news/2017/02/12/boston-shootings/>

<sup>12</sup> See: <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>

<sup>13</sup> See: <https://www.bostonherald.com/2015/10/30/three-boston-neighborhoods-925-unsolved-killings/>

<sup>14</sup> See: <https://massinc.org/research/the-geography-of-incarceration/>





# APPENDIX TO THE ROLLINS MEMO





# APPENDIX A

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CONTEXT & SUPPORTING  
RESOURCES OUTLINING  
OTHER JURISDICTIONS  
USING DIVERSIONARY  
ALTERNATIVES



# Appendix A

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## Context & Supporting Resources Outlining Other Jurisdictions Using Diversionary Alternatives

Efforts are being made across the country to increasingly develop and follow evidence-based policies that move resources away from the arrest and prosecution of low-level, nonviolent offenses. These emerging policies are a substantial step towards increasing safety and health, enhancing trust between law enforcement and the communities they serve, and reducing mass incarceration.

For example:

- In 2019, Baltimore, Maryland State's Attorney Marilyn Mosby [announced](#) that her office will no longer prosecute any cases related to marijuana possession, regardless of quantity or a person's criminal record.
- In 2019, District Attorney Wesley Bell in St. Louis County, MO passed a number of policies that reallocate prosecutorial resources, including on warrants, marijuana, child support, and probation revocations. [Interim Policies 1-2-19](#).
- In 2019, Tampa and Jacksonville, Florida state's attorneys Andrew Warren and Melissa Nelson [announced](#) programs that will restore driving privileges and eliminate prosecutions for driving with suspended licenses.
- In 2019, Dallas County, Texas District Attorney John Creuzot [announced](#) he would not prosecute first-time marijuana and simple criminal trespass cases.
- In 2019, Cook County, Illinois State's Attorney Kim Foxx [announced](#) she will not prosecute any marijuana cases.
- In 2018, prior to taking office, Durham County, NC District Attorney Satana DeBerry [announced](#) she would no longer use school discipline as a basis for prosecution. Upon taking office in 2019, she [waived fines and fees en masse](#).
- In 2018, New York City Mayor Bill DeBlasio committed to [cutting new arrests](#) for marijuana possession and Manhattan District Attorney Cy Vance [announced](#) an end to marijuana possession prosecutions.



- In 2018, Philadelphia, Pennsylvania District Attorney Larry Krasner [dropped](#) all marijuana prosecutions and [instructed](#) his attorneys to decline paraphernalia prosecutions and many prostitution prosecutions.
- In 2018, Snohomish County, Washington Prosecutor Mark Roe [committed](#) to declining to prosecute all drug cases that are less than two grams.
- In 2018, Shelby County, TN District Attorney Amy Weirich began [declining](#) to prosecute cases against anyone driving on a revoked license (so long as the license was revoked because of failure to pay criminal fines, traffic tickets, or child support).
- In 2018, King County, Washington Prosecutor Dan Satterberg [dropped](#) 1,500 petty misdemeanor cases.
- In 2018, Albany County, New York County Attorney David Soares [announced](#) he would no longer prosecute anyone accused of possessing up to 2 ounces of marijuana.

In addition to these forward-looking changes, prosecutors around the country are also increasingly taking affirmative steps to correct the harm inflicted by a decades-long history of over-prosecution. It is well-established historically that convictions can adversely affect employment opportunities, housing options, and create other barriers to economic and social success. For that reason, prosecutors across the country have taken affirmative steps to help clear the records of defendants who were convicted of marijuana possession under antiquated drug laws.

For example:

- In 2019, Baltimore, Maryland State's Attorney Marilyn Mosby [filed](#) a petition seeking to vacate nearly 4,000 convictions for marijuana possession, saying the move is necessary to "right an extraordinary wrong." Mosby [explained](#) in the filing: "The sordid history of marijuana prohibition lies in ethnic and racial bigotry." The petition further noted that racial disparities in possession arrests continue to exist in majority-black Baltimore even after Maryland's 2014 decriminalization of amounts less than 10 grams.



- In 2019, Cook County, Illinois State's Attorney Kim Foxx [announced](#) that she would "pursue the expungement of all misdemeanor marijuana convictions," and that she would do so in a manner that doesn't require individual expungement. DA Foxx stated: "The research and evidence indisputably show the housing and employment barriers associated with a marijuana conviction. So we are doing our part and will begin the process to expunge all misdemeanor marijuana convictions."
- In 2018, San Francisco, California District Attorney George Gascón applied retroactive relief to nearly 8,000 cases, [reducing some, clearing others](#). DA Gascón is [applying Prop 64 retroactively](#), reviewing, recalling and resentencing up to 4,940 felony marijuana convictions and dismissing and sealing 3,038 misdemeanors which were sentenced prior to the initiative's passage.
- Prospectively, Californians throughout the rest of the state will see relief from old marijuana convictions this year. A new law ([AB 1793](#)) requires the state's DOJ to identify all people eligible for relief under the expungement law and transfer their information to DAs for expungement process.
- In 2018, Philadelphia, Pennsylvania DA Larry Krasner [issued](#) a new policy to expedite expungement.
- In 2018, Seattle, Washington City Attorney Pete Holmes [asked the court](#) to vacate all convictions and dismiss all charges for misdemeanor marijuana possession that were prosecuted in the city before the state legalized marijuana for recreational purposes in 2012.
- In 2018, Chittenden County, Vermont State Attorney Sarah George [adopted a new policy](#) to allow individuals to apply to have their past marijuana possession records expunged or sealed regardless of when the conviction took place.



# APPENDIX B

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## SCDAO CASH BAIL, PRE-TRIAL DETENTION & PRESUMPTIVE RELEASE POLICY



# Appendix B

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## SCDAO Cash Bail, Pre-Trial Detention & Presumptive Release Policy in the Chelsea District Court, Boston Municipal Courts, and Juvenile Courts

This policy is written to ensure that prosecutors adhere to the Massachusetts bail statutes and SJC decisions in every case. For any person charged in Suffolk County, pre-trial release is the norm, detention is selectively limited, and any condition(s) of release that is imposed is based upon a thoughtful, individualized analysis that utilizes the least restrictive means practicable.

<b>General Principles</b>	<div>1. Consistent with the bail statutes, there will be a presumptive recommendation of release on personal recognizance without conditions for all individuals not charged with an offense that is detention-eligible under §58A. That presumption is only rebutted if there is clear evidence of a flight risk, as distinct from a needs-based reason for not returning to court. To deviate from this presumption, the line ADA must seek supervisory approval. If approved, the ADA should enter a notation to the file with the supervisor’s initials, and request the least restrictive conditions consistent with maintaining victim and community safety.</div> <div>2. For individuals charged with an offense that is detention-eligible under §58A, there will still be a presumption of release unless there are no conditions of release that would ensure the safety of an individual or the community. Then, the least restrictive condition(s) necessary to protect the public interest will apply. Preventive detention should be the last option considered.</div> <div>3. Requested condition(s) of release will not be leveraged as a bargaining tool during the pre-trial process.</div> <div>4. These principles will apply at all stages of the pre-trial process.</div>
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<b>Step 1: Charging Decisions</b>	<p>1. See policies related to Declination &amp; Diversion in <a href="#">APPENDIX C</a>.</p>
<b>Step 2: Presuming Release</b>	<p>1. <b>For all individuals charged with non-58A offenses</b>, there shall be a presumption of release on recognizance. ADAs should affirmatively request release on personal recognizance without conditions. ADAs should deviate from this presumption only if there is clear evidence that the individual is a flight risk, and/or if there are identifiable conditions of release that would serve to protect the safety of victim, witnesses, or the community. If, after reviewing the charges, criminal history, and talking to the appropriate civilian and law enforcement parties on the case, the ADA believes by clear evidence that an exception should be made, they should confer with their designated supervisor and seek approval to deviate from the presumption of personal recognizance and no conditions. The reasons should be noted in writing and placed in the case file. The ADA should then request the least restrictive condition(s) possible.</p> <p>2. <b>For all individuals charged with an offense eligible for a §58A hearing</b>, there still remains a presumption of release. ADAs may deviate from this presumption if there is clear evidence of a risk of flight on the current charge, or a clear safety risk to an identifiable victim or witness. Under §58A, preventative detention will only be imposed with a hearing for dangerousness. Detention-like conditions (stay-away orders, electronic monitoring) should only be imposed if there is an articulable, specific, credible threat to a specific person or property, and ideally after all of the victims, witnesses, and/or property owners on the matter in question have been consulted.</p>



<b>Factors for Determining Flight Risk</b>	<ol style="list-style-type: none"> <li>1. An individual is considered a flight risk if there is a clear showing of intent to evade prosecution <i>on the current charge</i>.</li> <li>2. ADAs can also consider prior failures to appear if there is a clear showing that an individual attempted to evade any phase of the criminal process. If there is a pattern of defaults, particularly within the last 3 years, they can be considered in determining risk of flight.</li> </ol>
<b>Factors for Requesting Specific Restrictive Conditions</b>	<ol style="list-style-type: none"> <li>1. Stay Away/No Contact: Specific restrictions on personal associations may be requested for the protection of all parties involved (for example, a domestic violence case where both parties have open cases with each other, potentially reflecting a toxic relationship cycling both individuals in the criminal justice system) but there must be clear evidence supporting this proposed restriction. This will also be the case on any restriction pertaining to travel in specific geographic locations.</li> <li>2. Electronic Monitoring: Given the potential for the invasion of a person's privacy caused by GPS monitoring, ADAs should explore alternative conditions before requesting electronic monitoring and view electronic monitoring as a serious condition. Electronic Monitoring should only be requested where there is a significant need based on threats or flight to ensure compliance with a court order such as curfew or stay-away.</li> <li>3. Drug or Alcohol Testing: Drug or Alcohol testing should only be sought as a condition of release if there is credible and sufficient evidence that drug or alcohol use itself creates a significant risk of future harm to themselves, a specific victim, or the community. In such circumstances, conditions should include a referral for an assessment and individualized needs-based determination of what, if any, conditions should be imposed.</li> <li>4. Proposed conditions should always be attainable and constructive.</li> </ol>



<p><b>Factors for Seeking Corrective Measures for Default (Failures to Appear)</b></p>	<ol style="list-style-type: none"> <li>ADAs will review prior conditions of release when there has been a failure to appear on an open case. Failure to appear for needs-based reasons (such as lack of childcare, transportation, or permission to leave work or other socio-economic mitigating factors) should be considered when making determinations.</li> <li>Following an established pattern of defaults when an individual attempted to evade a phase of the criminal process, bail may be considered. This should be a last resort. If an ADA requests cash bail, they will consider the individual’s financial resources.</li> </ol>
<p><b>Factors for Seeking Corrective Measures for Violation of Conditions of Release</b></p>	<ol style="list-style-type: none"> <li>Where there is an allegation that an individual has violated a condition of release, ADAs shall consider circumstances that mitigate that violation and confer with all relevant parties (for example, probation officers, police officers, witnesses, service providers, defense counsel) to ensure that the violation of the condition is not related to an individual’s ability to afford some aspect of the condition (for example, violations due to transportation or child-care issues). ADAs may seek a needs-based amendment to the conditions of release. Violations tied to drug or alcohol tests should not be used to criminalize addiction.</li> <li>ADAs should evaluate any violation on a case-by-case basis, and if they believe a default merits a more restrictive condition, they should document the more restrictive condition and get approval from their supervisor.</li> </ol>



# APPENDIX C

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## SCDAO DECLINATION & DIVERSION POLICY



# Appendix C

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## SCDAO Declination & Diversion Policy

At this time, this policy relates only to charges that will remain in a Division of the Boston Municipal Court, and Chelsea District Court. This list does not limit an ADA's ability to decline or divert other charges that are not on this defined list of offenses. The policy will be reevaluated periodically based on an assessment of data and feedback from community and court partners. The goal of this office is, as always, to protect the community's safety. This is best accomplished when the office first considers solutions that direct those in need of treatment — mental health, substance use disorder, or otherwise — to available resources, minimize court involvement, and keep people free of criminal records and able to work and function without government oversight. The intent of this policy is to produce long-term safety and health benefits for Suffolk County. This policy does not preclude subsequent use of statutory pre-trial diversion, like the Valor Act and G.L. c. 276A.

The list of 15 offenses identified for declination and diversion are included in the chart beginning on **page C-3** (the text of my campaign policy as originally written can be found in [APPENDIX D](#)).

**Charges on the list of 15 should be declined or dismissed pre-arraignment without conditions.** The presumption is that charges that fall into this category should always be declined, even when attached to another charge. After reviewing the incident, if the ADA identifies **exceptions or factors**, the charge may be treated in three other ways:

1. **Charges Held and Dismissed Later Contingent on an Event:** Charges where the individual charged must always meet some condition(s) prior to a pre-arraignment dismissal.
2. **Charges Held Because of an Exception/ and Possibly Dismissed Later Contingent on an Event:** Charges elevated from the first category because of the case's facts, where the individual charged must meet some condition(s) prior to a pre-arraignment diversion and/or treatment.
3. **Charges that are Discussed with a Supervisor as the Result of an ADA Seeking an Exception to the Presumption to Decline or Divert.**



The tables on the following pages provide an outline of how ADAs will handle these offenses with four possible outcomes based on the context of the incident.

## GENERAL CONCEPTS

- **The line ADA always retains discretion to seek a deviation from this policy when a person poses an identifiable threat to another individual or other circumstances of similar gravity.** In that instance, the ADA should consult with their supervisor, and place their justification in writing, along with the supervisor's determination, in the case file. Additionally, the ADA is always free to discuss any other reasons for deviation with their supervisor. This should also be in writing and placed in the file. Deviation such as these should be the exception rather than the rule.
- **Determining what counts as a “prior offense”:** To the extent that this policy requires an ADA to consider prior offenses, they may consider all convictions or charges (not just those limited to the list of 15) within the previous 36 months. In situations where the line ADA may want to consider charges or convictions older than 36 months, they must first consult with their supervisor, get their approval, and then make a specific note in the case file.
- **In many instances, our office will need more time and seek a pre-arraignment continuance.** Cases may require a continuance of the arraignment date for a period of 30 to 60 days to permit fulfillment of this policy.
- **The DA and her leadership team will meet with court personnel in the Boston Municipal Court, Chelsea District Court, and Juvenile Court to discuss the office's policies.** Having the logistical cooperation of the judiciary and defense bar will be helpful with the implementation of this policy.
- **The office will track all charge dispositions that follow this policy.** In order to effectively measure, monitor, and modify this policy, the office must collect data. This data collection will also be important with respect to tracking relevant “prior offenses” under this policy that occur after January 2, 2019 (since the majority of those charges should not reach a person's CORI due to a pre-arraignment disposition).



CHARGE	EXCEPTIONS OR FACTORS FOR CONSIDERATION
<b>Trespass</b> G.L. c. 266, § 120	<ul style="list-style-type: none"> <li>• If there are repeat, recent issues on public or private property, or a verifiable imminent safety risk, the ADA may escalate this to a pre- or post-arraignment continuance with a stay away order as a condition.</li> <li>• Pre-arraignment or pre-plea diversion should be the next resort, with consultation from the property owner, police officer, and, where appropriate, a social worker or street worker.</li> </ul>
<b>Shoplifting</b> G.L. c. 266, § 30a	<ul style="list-style-type: none"> <li>• When the item taken is recovered and returned, the individual appears to have substance use issues, mental health issues, and/or the item is taken out of necessity (e.g. food, diapers, childcare-related items, etc.) due to a lack of employment or resources, the policy is for the ADA to presumptively decline the charge(s).</li> </ul> <p>When the items taken are NOT out of necessity, AND:</p> <ol style="list-style-type: none"> <li>1. there is a pattern of this type of conduct (shoplifting, larceny, etc.) within the past three years, OR;</li> <li>2. the item was unrecovered or damaged,</li> </ol> <p>the ADA can move to a pre-arraignment restitution agreement that takes the individual's ability to pay into consideration.</p> <ul style="list-style-type: none"> <li>• If the offense occurred as a result of poverty, mental illness, and/or addiction, the ADA will work in consultation with a program and/or social worker to identify pre-arraignment diversion program options.</li> </ul>
<b>Larceny</b> G.L. c. 266, § 30	<p>When the item taken is recovered, undamaged, and returned to the owner, the individual has substance use issues, mental health issues, and/or the item is alleged to have been taken out of necessity (e.g. food, diapers, childcare-related items, etc.) due to a lack of employment or resources, the policy is for ADAs to presumptively decline the charge(s).</p>



CHARGE	EXCEPTIONS OR FACTORS FOR CONSIDERATION
<b>Larceny</b> G.L. c. 266, § 30  <b>Cont'd</b>	<p>When the items taken are NOT out of necessity, AND:</p> <ol style="list-style-type: none"> <li>1. this is the person's third or more offense of this type (shoplifting, larceny, etc.) within the last three years, OR;</li> <li>2. the item was unrecovered or damaged,</li> </ol> <p>the ADA can move to a pre-arraignment restitution agreement that takes the individual's ability to pay into consideration.</p> <ul style="list-style-type: none"> <li>• If the offense occurred as a result of poverty, mental illness, and/or addiction, the ADA will work in consultation with a program and/or social worker identify pre-arraignment diversion program options.</li> </ul>
<b>Disorderly Conduct/ Disturbing the Peace</b> G.L. c. 272, § 53	<ul style="list-style-type: none"> <li>• When law enforcement is conducting crowd control operations before, during, or after a sporting event, rally, protest, parade, or other event involving large numbers of people, and individuals are arrested for behaving in a manner that puts themselves and/or members of the public in imminent danger, or in a manner that directly impedes law enforcement's ability to conduct crowd control, an ADA may seek supervisory approval to proceed to arraignment.</li> <li>• Any disparities in arrests based on the circumstances will be considered. For example, significantly less arrests at sporting events than at rallies or protests, or differences in amounts of arrests depending on the content of the rallies and protests.</li> <li>• If the alleged behavior is similar, but arrest outcomes are different, the disparity should be brought to the attention of a supervisor or member of management.</li> </ul>
<b>Receiving Stolen Property</b> G.L. c. 266, § 60	<ul style="list-style-type: none"> <li>• When the item taken is recovered, undamaged, and returned to the owner, the individual has substance use issues, mental health issues, and/or the item is alleged to have been taken out of necessity (e.g. food, diapers, childcare-related items, etc.) due to a lack of employment or resources, the policy is for ADAs to presumptively decline the charge(s).</li> </ul>



CHARGE	EXCEPTIONS OR FACTORS FOR CONSIDERATION
<b>Receiving Stolen Property</b> G.L. c. 266, § 60  <b>Cont'd</b>	<p>When the items taken are NOT out of necessity, AND:</p> <ol style="list-style-type: none"><li>1. there is a pattern of this type of conduct (shoplifting, larceny, etc.) within the last three years, OR;</li><li>2. the item was unrecovered or damaged,</li></ol> <p>the ADA can move to a pre-arraignment restitution agreement that takes the individual's ability to pay into consideration.</p> <p>If the offense occurred as a result of poverty, mental illness, and/or addiction, the ADA will work to identify pre-arraignment diversion program options.</p>
<b>Driving with a Suspended License</b> G.L. c. 90, § 23	<ul style="list-style-type: none"><li>• These charges can move to arraignment if the license suspension is due to a criminal driving suspension, including, but not limited to the following:<ul style="list-style-type: none"><li>• Motor vehicle homicide.</li><li>• Vehicular manslaughter.</li><li>• Stealing a motor vehicle.</li><li>• Leaving the scene of accident with injuries.</li><li>• Leaving the scene of an accident with property damage.</li><li>• Driving to endanger.</li><li>• Driving under the influence of alcohol and/or drugs.</li></ul></li><li>• An inability to pay a fine or other license reinstatement fee is NOT reason to move such charges to arraignment.</li></ul>



CHARGE	EXCEPTIONS OR FACTORS FOR CONSIDERATION
<b>B&amp;E into a Vacant Property to Sleep or Escape Cold and No Property Damage</b> G.L. c. 266 §§ 16, 16A, 18, 19	<ul style="list-style-type: none"> <li>• When there are repeat issues on public or private property, the ADA may escalate this to a pre-arraignment dismissal with a stay away order as a condition.</li> <li>• Pre-arraignment diversion should then be the next resort.</li> <li>• If these preliminary options are not working, and the individual continues engaging in the behavior, the ADA should consult their supervisor to come up with alternative solutions such as assistance with shelter or housing (if based on homelessness), and supportive treatment (if it is based on a mental health or substance use condition).</li> <li>• If prosecution is considered, it requires supervisory approval and should be a last resort.</li> </ul>
<b>B&amp;E into a Non-Vacant Property to Sleep or Escape the Cold, with Property Damage</b> G.L. c. 266, § 18	<ul style="list-style-type: none"> <li>• Pre-arraignment diversion with a stay away order and restitution for any damage, calibrated to an individual's ability to pay.</li> <li>• If unsuccessful, the next resort should include partnering with a program and/or social worker to initiate a discussion about housing options and other social services in the context of diversion.</li> <li>• If these attempts are unsuccessful and there remains a pattern of this type of conduct within the last three years, the case can proceed to arraignment with a strong emphasis on services and diversion.</li> </ul>
<b>Wanton or Malicious Destruction of Property</b> G.L. c. 266, § 127	<ul style="list-style-type: none"> <li>• The ADA will work with the individual to develop a pre-arraignment restitution agreement that is obtainable given the individual's means and abilities.</li> <li>• Restorative justice may also be an alternative to financial restitution.</li> </ul>



CHARGE	EXCEPTIONS OR FACTORS FOR CONSIDERATION
<b>Threats</b> G.L. c. 275, § 2-4	<ul style="list-style-type: none"><li>• Where there is a credible risk of violence toward an identifiable individual, shown by clear evidence, or where the individual charged has a history of threats toward that person, the ADA can proceed to arraignment.</li><li>• This presumption in no way diminishes our ability to move forward with threats that in any way relate to domestic violence or hate crimes.</li><li>• If possible, pre-arraignment restorative justice or diversion where the history of threats could be attributable to mental illness or substance use disorder is the next preferable result.</li><li>• If none of these conditions are successful, the case can be arraigned and proceed on the pre-trial track.</li></ul>
<b>Minor in Possession of Alcohol</b> G.L. c. 138, § 34C	No identified exceptions.
<b>Marijuana Possession &amp; Possession of Marijuana Paraphernalia</b> G.L. c. 94C, §§ 32I, 34	No identified exceptions.
<b>Possession with Intent to Distribute</b> G.L. c. 94C, §§ 32, 32A, 32B, 32C, 32D	The ADA must first evaluate whether there is clear indicia of intent to distribute beyond mere quantity (such as a confluence of factors including significant amounts of cash, scales, ledgers, etc.), and if not, these cases should proceed under the “possession” policy and be treated that way for prior offenses.



CHARGE	EXCEPTIONS OR FACTORS FOR CONSIDERATION
<b>Possession with Intent to Distribute</b> G.L. c. 94C, §§ 32, 32A, 32B, 32C, 32D  <b>Cont'd</b>	<p>Where the above factors are met:</p> <ul style="list-style-type: none"> <li>• The ADA should consider whether this is a first offense, or if there are like offenses (except as it may relate to PWID Marijuana) within the past 3 years. If there is a pattern of prior offenses within the past 3 years, the ADA should consider the result of said cases in determining whether to treat the instant situation as a first offense.</li> <li>• With a first offense, the case will be held for a period of three to six months with an agreement that there will be no new PWID arrests, and then dismissed if those conditions are met. (For marijuana offenses, this is always the policy unless the case involves a credible threat of violence toward an identifiable individual.)</li> <li>• The next resort should be pre-arraignment diversion.</li> <li>• If these attempts are unsuccessful, and there remains a pattern of this type of conduct within the last three years, the case can proceed to arraignment, though non-conviction resolutions should still be pursued whenever possible.</li> </ul>
<b>Non-Marijuana Drug Possession</b> G.L. c. 94C, § 34	<ul style="list-style-type: none"> <li>• At any arrest where substance use disorder is a significant factor, ADAs will offer a meeting with an in-house social worker, licensed therapeutic clinician, or referral to a regulating agency with social workers and/or licensed therapeutic clinicians, to discuss public health treatment options.</li> <li>• If there is a pattern of arrests for similar conduct within the last three years, this meeting is required. Our office will form partnerships and working groups to explore significantly improving public health alternatives outside of the justice system.</li> </ul>



CHARGE	EXCEPTIONS OR FACTORS FOR CONSIDERATION
<b>Resisting Arrest</b> G.L. c. 268, § 32B	Resisting involves the actual use of physical force against a police officer. If there is actual physical force used, then the case can proceed to arraignment.



# APPENDIX D

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## ORIGINAL TEXT OF THE ROLLINS CAMPAIGN'S PRESUMPTIVE DECLINATION & DIVERSION POLICY (AUGUST 2018)



## CHARGES TO BE DECLINED

Charges for which the Default is to Decline Prosecuting (unless supervisor permission is obtained).

- Trespassing
- Shoplifting (including offenses that are essentially shoplifting but charged as larceny)
- Larceny under \$250
- Disorderly conduct
- Disturbing the peace
- Receiving stolen property
- Minor driving offenses, including operating with a suspend or revoked license
- Breaking and entering — where it is into a vacant property or where it is for the purpose of sleeping or seeking refuge from the cold and there is no actual damage to property
- Wanton or malicious destruction of property
- Threats – excluding domestic violence
- Minor in possession of alcohol
- Drug possession
- Drug possession with intent to distribute
- A stand alone resisting arrest charge, i.e. cases where a person is charged with resisting arrest and that is the only charge
- A resisting arrest charge combined with only charges that all fall under the list of charges to decline to prosecute, e.g. resisting arrest charge combined only with a trespassing charge

Instead of prosecuting, these cases should be (1) outright dismissed prior to arraignment or (2) where appropriate, diverted and treated as a civil infraction for which community service is satisfactory, restitution is satisfactory or engagement with appropriate community-based no-cost programming, job training or schooling is satisfactory. In the exceptional circumstances where prosecution of one of these charges is warranted, the line DA must first seek permission from his or her supervisor. If necessary, arraignment will be continued to allow for consultation with supervisor. Thus, there will be an avenue for prosecuting these misdemeanors when necessary but it will be appropriately overseen by experienced prosecutors.

See: <https://rollins4da.com/policy/charges-to-be-declined/>



